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RECORD, CASE No. 14,573.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~1107.~~ 710

THE ALBUQUERQUE NATIONAL BANK, APPELLANT,

vs.

JOSE L. PEREA, SHERIFF AND EX OFFICIO COLLECTOR OF THE COUNTY OF BERNALILLO, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED APRIL 11, 1891.

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1 Be it remembered that heretofore, to wit, on the twenty-sixth day of December, A. D. 1889, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of the record of the district court of the second judicial district of said Territory, sitting within and for the county of Bernalillo, in a certain cause then lately pending in said district court, wherein Albuquerque National Bank was complainant and Jose L. Perea and Clifford L. Jackson were defendants; which said transcript was and is in the words and figures following, to wit:

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Sheriff and *ex Officio* Collector of Bernalillo County. } No. 2714¼.

TERRITORY OF NEW MEXICO,
Second Judicial District, County of Bernalillo, } *ss:*

Be it remembered that heretofore, to wit, on the 3d day of November, A. D. 1888, there was filed in the office of the clerk of the district court of the Territory of New Mexico for the second judicial district and county of Bernalillo a bill for injunction in the words and figures following, to wit:

Bill for Injunction.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA and CLIFFORD L. JACKSON, Defendants. } No. 2714¼.

2 Bill for injunction.

Filed in my office this 3d day of Nov., 1888.
CHILION RILEY, *Clerk.*

WILLIAM B. CHILDERS,
Solicitor for Complainant.

Filed in my office this 19th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court of the Second Judicial District of the Territory of New Mexico for the County of Bernalillo, for the Trial of Causes Arising under the Laws of the Territory, at the March, A. D. 1889, Term Thereof.

To the Honorable William H. Brinker, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, in chancery sitting:

Your petitioner, The Albuquerque National Bank, a corporation

duly incorporated under the laws of the United States, with its principal place of business at Albuquerque, in said county and Territory, complains of Jose L. Perea, a resident of the county of Bernalillo and sheriff of said county, and Clifford L. Jackson, a resident of the county of Socorro and Territory aforesaid and district attorney of the second judicial district of the Territory of New Mexico, and respectfully represents unto your honor that the said defendant Jose L. Perea is sheriff and *ex officio* collector of taxes for the said county
3 of Bernalillo, and that the said Clifford L. Jackson is district attorney of the second judicial district of the Territory of New Mexico.

Your orators further represent that it is engaged in the banking business in said county of Bernalillo, and further represents that it made a return upon its property for taxation in said county to C. W. Lewis, assessor of said county, as required by law, and within the time required by law, as will more fully appear from a copy of its said return, filed herewith, marked "Exhibit A," and made a part of this bill.

Your orator further represents that at the time of making its said return of its property, including its capital stock and its surplus, as shown by its return, your orator protested against the assessment of the value of said property, to wit, its capital stock and said surplus, at any greater rate of valuation than other property is assessed at in the Territory of New Mexico and county of Bernalillo, protesting that its said property could not be assessed at its par value—that is to say, that its stock could not be assessed at par and its surplus at its full money value, because other property in the said county and Territory is not assessed at its full value, and because the law requires all property to be valued and assessed uniformly and equitably, and because the laws of the United States prohibits the assessment of shares of national banks assessed at any greater rate than is assessed on any other moneyed capital in the hands of individual citizens in said Territory, which said protest is a part of said return, as filed herewith, marked "Exhibit A."

4 Your orator further alleges that the said assessor of the said county of Bernalillo wholly disregarded said protest and assessed said property at its full value, and thereupon your orator appealed to the board of county commissioners of said county of Bernalillo, sitting as a board of equalization, and presented to said board its said protest, and thereupon said board reduced said assessment on your orator's said property to 85 per cent. of the par value of said surplus and the capital stock to stand as assessed. A copy of the proceedings of the board of equalization in the reduction of said assessment is filed herewith, marked "Exhibit B," and made a part of this bill, which said assessment and valuation on its capital stock of one hundred thousand dollars and surplus of ten thousand dollars amounts to the sum of one hundred and ten thousand dollars; and your orator further represents that all other property in the said county and Territory is not assessed at near so high a valuation upon its actual value as said board of equalization assessed your orator's said property; that the average valuation of other property in the hands

of individuals and other corporations in said county and Territory does not exceed seventy per cent., and that it is so assessed systematically and continuously by the said assessor of said county and said board of equalization, and no valuation estimated upon its actual value of at least thirty per cent.

Your orator further says that bank stocks, as it is informed
5 and believes, in the county of San Miguel, in said Territory, is assessed at less that eighty-five per cent.

Your orator further alleges that said discrimination and valuation of your orator's property, as compared with the value of other property of individuals and moneyed capital in said county and Territory, is inequitable, unjust and unlawful, and in violation of the laws of the United States and of the statutes of the Territory of New Mexico.

Your orator further alleges that the amount of its taxes upon the assessment as made by the board of equalization is the sum of two thousand one hundred and eighty-nine ($2,189.00) dollars, and that the amount of the assessment which your orator should justly pay for its said property, if lawfully, equitably, and justly assessed, would be the sum of fifteen hundred and thirty-two dollars and thirty cents, which said sum your orator brings into court and hereby tenders and offers to pay to the said defendant, Jose L. Perea, *ex officio* collector of said county of Bernalillo.

And your orator further alleges that the said collector refuses to accept said sum so tendered and offered, and that the said assessment-roll, a copy of which is filed herewith, marked "Exhibit C," and made a part of this bill, upon which your orator's property is so assessed, has the force and effect of a judgment and execution, and that the said defendant threatens to levy, seize, and destrain upon the property of your orator for the full amount of the said taxes
6 so unjustly assessed against your orator's said property as aforesaid.

Your orator further alleges that should it pay the sum so unlawfully demanded of it by virtue of said assessment and bring suit at law for the recovery thereof, as is illegal and unjust, that such suit would be unavailing for the reason that any judgment recovered by your orator against said county of Bernalillo or Territory of New Mexico would be paid in warrants of the said county and Territory, which said warrants are not worth their face value, but are sold upon the market at a discount, there being no funds in the treasury with which to pay the same if presented.

Your orator further alleges that under the terms of the laws of the Territory of New Mexico said defendant, as such collector, if empowered to sell your orator's real estate and issue to the purchaser thereof a certificate of sale, and thereafter, before the making and delivery of a deed to such purchaser or assignee, your orator, in order to redeem the same, would be compelled to pay the sums shown to have been paid by the person to whom such certificate was issued, together with all taxes subsequently paid by said purchaser, with interest thereon at the rate of three per cent. per month.

Your orator further alleges that after the lapse of three years the

collector then in office, upon request of the holder of such certificate, would be compelled to execute and deliver a deed for the property by such certificate shown to have been sold, and said deed,
7 when so executed and delivered, would be *prima facie* evidence of all the facts necessary to convey to the grantee named therein a valid title to the property thereby conveyed.

Your orator alleges that should they permit their property to be sold under said illegal assessment they would have to redeem the same within said period of three years, or the deed so authorized would on its face convey their title to said property.

Wherefore, inasmuch as your orator is remediless in a court of law, it brings this its bill of complaint in your honor's court of chancery and pray- that your honor will cause to issue, under the seal of this honorable court, a writ of injunction enjoining and restraining the said Jose L. Perea, sheriff and *ex officio* collector as aforesaid, and any of his deputies, his agents, and employés, from in any manner further proceeding to collect and from taking any steps to further the collection of the said tax and the items of said taxation as aforesaid, and that the said Clifford L. Jackson, as such district attorney, be enjoined and restrained from prosecuting any suit for the collection of said taxes; and may it please your honor to grant unto your orator the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said defendant Jose L. Perea, sheriff as aforesaid, and the said defendant Clifford L. Jackson, district attorney as aforesaid, and their successors in office, commanding them and each of them, on a day to be therein named and under penalty to be therein inserted, to be and appear before this
8 honorable court, and then and there full, true, perfect answer make to the matters and things contained herein, answer under oath being hereby expressly waived.

Your orator further prays that your honor will cause to be issued forthwith, under the seal of this honorable court, a preliminary writ of injunction, enjoining and restraining the said defendant Jose L. Perea, as such sheriff and *ex officio* collector, from enforcing the collection of the said taxes so assessed as aforesaid by virtue of the assessment-roll in his possession and enjoining the said defendant Clifford L. Jackson, as such district attorney, from bringing any suit for the collection of said taxes until the further orders of this honorable court therein; and thus your orator will ever pray.

ALBUQUERQUE NATIONAL BANK,
By JOHN A. LEE, *President.*

WILLIAM B. CHILDERS,
Solicitor for Complainant.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

John A. Lee, being duly sworn, deposes and says that he is the president of the complainant, The Albuquerque National Bank, in the foregoing bill of complaint; that he has read the said bill of complaint and knows the contents thereof, and that the same is true, ex-

cept as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

JOHN A. LEE.

9 Subscribed and sworn to before me this 3d day of November, A. D. 1888.

[SEAL.] E. W. DOBSON,
Notary Public.

Upon complainant filing its bill let a rule issue and be served upon defendants forthwith to show cause before me, at Socorro, on the 12th day of November next, if any they have, why an injunction should not issue as prayed.

Done at chambers, in Albuquerque, this 3d day of November, 1888.

WM. H. BRINKER, *Judge.*

EXHIBIT A.

No. 2714¼.

District Court, Bernalillo County.

ALBUQUERQUE NATIONAL BANK *vs.* JOSE L. PEREA *et al.* } No. 2714¼.

EXHIBIT A.

Filed in my office this 3d day of Nov., 1888.

CHILION RILEY, *Clerk.*

Filed in my office this 19th day of Nov., 1889.

CHAS. F. HUNT, *Clerk.*

Precinct No. 26—*Property Return of the Albuquerque National Bank.*

10 Recapitulation.

Value of real estate	$110,000
Capital stock and surplus	
Value of personal property	
Total	
Sum exempt if head of family and resident of Territory	
Amount subject to tax	

Distribution of tax.

Territory, one-half	$550 00
County, one-quarter	275 00
Schools	275 00
Penitentiary, one-half of one mill on the dollar	55 00
Capitol, one-half of one mill on the dollar	22 00

Capitol contingent fund, one-tenth of mill	
Railroad tax	
Interest on county funded debt	41 25
Court-house and jail bonds	123 75
Interest on railroad bonds	605 00
Town general, town special	220 00
Total	2,189 00

Schedule of real and personal property belonging to Albuquerque National bank, a resident of the county of Bernalillo, Territory of New Mexico, on the first day of March, 1888.

* * * * * * *

11 *Oath of Affirmation.*

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

I, S. M. Folsom, do solemnly swear (or affirm) that I am a resident of the county of Bernalillo; that, according to the best of my knowledge and belief, the within list contains a full and correct statement of all property subject to taxation in the Territory *of* which I or any firm of which I am a member or any company or corporation of which I am president, cashier, secretary, or managing agent own, possess, or control and which is not already assessed.

S. M. FOLSOM.

Subscribed and sworn to before me this 30 day of April, 1888.

C. W. LEWIS, *Assessor.*

Real Estate.

City and town lots and houses, fraction, or other description.	Addition.	Lots.	Block.
	N. M. Town Co.	5 and 6	45
	Do.	15 to 18	21
	Do.	17 and 18	33
	Do.	19	21
3⅛ acres of land, bounded N. by Cornnel road, S. by land of Forrester, and W. by land of Jose Ignacio Garcia, said land being in precinct 12.	Do.	21 to 23	34
	Do.	1 to 5	S.
All of said real estate is represented in the capital stock of said bank.			

Personal Property.

Balance, subject to taxation, capital stock	$100,000 00
All other property not herein enumerated	
Net surplus	10,000 00
Total value personal property	$110,000 00

12 TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

I, S. M. Folsom, solemnly swear that I am vice-president of the Albuquerque National bank, incorporated under the laws of the United States; that, in accordance to the best of my knowledge and belief, the within list contains a full and correct statement of all the property of the said bank that is subject to taxation as the property of the same.

(Signed) S. M. FOLSOM.

Subscribed and sworn to before me this 30th day of April, A. D. 1888.

——— ———.

Said Albuquerque National bank hereby files its said return of its capital stock and surplus under protest, protesting and alleging that said capital stock and surplus is taxable as the property of its shareholders, but that the payment of said taxes may be exacted of the said bank the said bank hereby admits.

And said bank further protests and alleges that said capital stock and surplus is taxable only upon the uniform valuation that other property is taxed in said county of Bernalillo and Territory of New Mexico; and said bank further protests that the rate of valuation upon other property in said county and Territory is much less than its actual value and does not exceed upon the average seventy per cent. of the actual value of the property so taxed, and that to tax said capital stock and surplus at its full actual value and other property in said county and Territory at seventy per centum of
13 its actual value is a violation of the laws of the United States, and that said assessment is inequitable, illegal, and void.

Wherefore the said bank by making this return does not admit in any way whatever that said stock and surplus is taxable at any greater than seventy per cent. of its actual value, which is its par value.

ALBUQUERQUE NATIONAL BANK,
By S. M. FOLSOM, *Vice-Pres't.*

EXHIBIT B.

Regular session.

ALBUQUERQUE, N. M., *August* 6, 1888.

Present: Marcos C. de Baca, chairman; Christoval Armijo, commissioner.

F. H. KENT, *Clerk,*
By J. H. SUMMERS, *Deputy.*

Proceedings of previous meeting read and approved.

In the matter of the assessment of the First National Bank of Albuquerque and the Albuquerque National bank the board decides

that the surplus fund be reduced to eighty-five cents on the dollar and the capital stock to stand as assessed.

* * * * * * *

Approved August 11th, 1888.

MARCOS C. DE BACA, *Chairman.*

14 Paste "Exhibit C to Original Bill."

(See table marked p. 14.)

And thereafter was filed, on the 19th day of Nov., 1889, in the office of said clerk by said complainant a motion in words and figures following, to wit:

Motion.

In the District Court, County of Bernalillo.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA *et al.*, Defendants. } No. 2714¼.

15 *Motion.*

Filed in my office this 19th day of Nov., 1889.

CHAS. F. HUNT, *Clerk.*

W. B. CHILDERS,
Solicitor for Complainant.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA *et al.*

Now comes the complainant in the above-entitled cause and moves the court to docket said cause, the same having been left off the docket of said court by inadvertence of the clerk thereof, and for leave to file a petition allowing the complainant to file a supplemental bill therein, and for a rule upon the defendant to show cause why said prayer to said petition should not be granted.

W. B. CHILDERS,
Solicitor for Complainant.

And thereafter and on the 19th day of November, A. D. 1889, there was filed in the office of the said clerk a petition to file a supplemental bill in words and figures following, to wit:

), TERRITORY OF NEW MEXICO, FOR YEAR 1888.

Allotment.						Town of Albuquerque.			
County.	School.	Penitentiary.	Capitol.	Int. Co. funded debt.	Interest C. H. & J. bonds.	General.	Special.	Territor'l current expense.	Total tax.
$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
275 00	275 00	55 00	22 00	41 25	123 75	605 00	220 00	22 00	2,189 00

Petition to File Supplemental Bill.

No. 2714¼.

In the District Court, County of Bernalillo.

16 ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA *et al.*, Defendants.

Petition to File Supplemental Bill.

Filed in my office this 19th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

WILLIAM B. CHILDERS,
Solicitor for Complainant.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA *et al.*

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, in chancery sitting:

Your petitioner, The Albuquerque National Bank, the above-named complainant, respectfully represents that on the — day of November, A. D. 1888, it filed its bill of complaint in this honorable court against the said Jose L. Perea, as sheriff of the county of Bernalillo, and Clifford L. Jackson, at that time district attorney of the second judicial district of the Territory of New Mexico, for
17 the purpose of restraining the said defendant Jose L. Perea, as such sheriff and *ex officio* collector of the said county, and his deputies, agents, and employees from in any manner proceeding to collect and from taking any steps to collect the taxes pretended to have been assessed against the said complainant upon its property as assessed by the assessor of the said county and as finally fixed by the board of county commissioners, sitting as a board of equalization, in the year A. D. 1888, and restraining the said Clifford L. Jackson, as such district attorney, from prosecuting any suit for the collection of said taxes.

Your petitioner further represents that the said Jose L. Perea and the said Clifford L. Jackson appeared to said bill, and said Clifford L. Jackson appeared as district attorney, and the said Jose L. Perea, by the said Jackson, as his attorney, and that upon the filing of the said bill and order was issued requiring said defendants to show cause, if any they had, why a temporary injunction should not issue in accordance with the prayer of said bill, and that before the hearing upon the rule a stipulation was entered into by and

between the said Clifford L. Jackson, as such district attorney and as attorney for the said Jose L. Perea, that seventy per cent. of the amount of the taxes due from the complainant to each of the tax funds as the same appeared on the tax books for the year A. D. 1888 should be paid in to the said collector, and that the balance of thirty per cent. should be withheld by the complainant to await
18 the result of said suit, and that all penalties should be remitted and not run until the hearing of the rule to show cause why an injunction should not issue.

Your petitioner further states that since the issuance of said rule the said Clifford L. Jackson has gone out of office as such district attorney and has been succeeded by one Victor A. Greenleaf, and that since the issuance of said rule the assessor for the said county of Bernalillo and the board of county commissioners, sitting as a board of equalization, have assessed and levied upon your petitioner's property, illegally, as your orator is advised, taxes for the year A. D. 1889, and that the said defendant, Jose L. Perea, is now demanding payment of the same from your orator.

Wherefore your petitioner is advised that it is necessary to file a supplemental bill and allege therein the additional facts above referred to. Your petitioner therefore prays that leave may be granted to it to file a supplemental bill for the purpose of alleging the additional facts and such facts by way of amendment to the original bill as it may deem advisable, with proper and apt words for the allegations of the same, and with such prayer for relief as may be proper, and allege such other and further allegations and prayers as to it may seem fit.

WM. B. CHILDERS,
Solicitor for Petitioner.

And thereafter, to wit, on the 29th day of November, A. D. 1889, there was filed in the office of the clerk of said court by said
19 complainant a supplemental bill in words and figures following, to wit:

No. 2714½.

TERRITORY OF NEW MEXICO,
Second Judicial District, County of Bernalillo.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Defendant.

Supplemental Bill.

Filed in my office this 29th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

WILLIAM B. CHILDERS,
Albuquerque, N. M., Solicitor for Complainant.

In the District Court, Second Judicial District, County of Bernalillo, November Term, A. D. 1889.

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof:

Supplemental Bill.

Your petitioner, The Albuquerque National Bank, a corporation incorporated under the laws of the United States, brings this its
20 supplemental bill, by leave of the court first had and obtained, and complains of Jose L. Perea, a resident of the county of Bernalillo and sheriff and *ex officio* collector of said county, and respectfully represents unto your honor that the said defendant, Jose L. Perea, is sheriff and *ex officio* collector of taxes for the said county of Bernalillo.

Your orator further represents that it is engaged in the banking business in said county of Bernalillo, and further represents that it made a return upon its property for taxation in said county as required by law and within the time required by law, as will more fully appear from a copy of its return filed herewith, marked Exhibit "A," and made a part of this bill.

Your orator further represents that at the time of making its said return of its property, including its capital stock and its surplus, as shown by its return, your orator protested against the assessment of the value of said property, to wit, its capital stock and said surplus, at any greater rate of valuation than other property is assessed at in the Territory of New Mexico and the county of Bernalillo, protesting that its said property could not be assessed at its par value—that is to say, that its stock could not be assessed — par and its surplus at its full money value, because other property in the said county and Territory is not assessed at its full value, and because the law requires all property to be valued and assessed uniformly and equitably, and because the laws of the United States prohibits the assessment of shares of national banks assessed at any
21 greater rate than is assessed on any other moneyed capital in the hands of individual citizens in said Territory, which said protest is a part of said return as filed herewith, marked "Exhibit A."

And your orator further protested that its said capital stock was not subject to taxation as the property of your orator and in bulk or *in solido*, but that the laws of the United States required that such stock should be assessed and taxed to the respective owners of your orator's shares and in the names of such owners and not as the property of your orator and against your orator and not your orator's money.

And your orator further alleges that the said assessor of the said county of Bernalillo wholly disregarded said protest and assessed said property at its full value and in bulk and *in solido* to your orator, and thereupon your orator appealed to the board of county commissioners of said county of Bernalillo, sitting as a board of equal-

ization, and presented to said board its said protest, and thereupon said board reduced said assessment on your orator's said property to eighty-five per cent. of the par value of said surplus—a copy of the proceedings of the board of equalization in the reduction of said assessment is filed herewith, marked "Exhibit A," and made a part of this bill—which said assessment and valuation of its capital stock of one hundred thousand dollars and surplus of ten thousand dollars amounts to the sum of one hundred and ten thousand dollars, and your orators further represent that all other property in the said county and Territory is not assessed at near so
22 high a valuation upon its actual value as said board of equalization assessed your orator's said property, and that the average valuation of other property in the hands of individuals and other corporations in said county and Territory does not exceed seventy per cent., and that it is so assessed systematically and continuously by the said assessor of said county and said board of equalization at an undervaluation of at least thirty per cent. of its actual value.

Your orator further says that bank stock, as it is informed and believes, in the county of San Miguel, in the said Territory, is assessed at less than eighty-five per cent. of their actual value.

Your orator further alleges that said discrimination and valuation of your orator's property, as compared with the value of other property of individuals and moneyed capital in said county and Territory, is inequitable, unjust, and unlawful and in violation of the laws of the United States and of the statutes of the Territory of New Mexico.

Your orator further alleges that by law the shares of its capital stock can only be assessed to the individual owners thereof and as their property and against them, and is not subject to assessment and taxation as the property of your orator and in your orator's name.

And your orator further alleges that a large portion of its capital stock is owned by non-residents of the Territory of New Mex-
23 ico, many of whom are heads of families, to wit, the sum of seventy-four thousand one hundred dollars, and that under the laws of the Territory all persons who are heads of families are entitled to exemption not exceeding three hundred dollars in full, and that by the way and manner of assessing said capital stock as assessed to your orator, the some being a large portion of its property so assessed, the owners of said stock are entirely deprived of any benefit by way of exemption and are thus unjustly discriminated against, and which discrimination is in violation of the act of Congress permitting national banks to be taxed.

Your orator further alleges that under the laws of the Territory a large amount of other property in said Territory, such as mines, mining claims bearing gold and silver and other precious or useful metals, ditches, canals, and flumes used for irrigating lands, and industrial pursuits, are exempt from taxation, thus unjustifiable and discriminating against your orator and owners of its stock.

Your orator further alleges that it is the owner and holder of

twenty-seven thousand dollars of bonds of the United States, known as Government bonds, and that its investment in said bonds is required by the laws of the United States in order to enable it to carry on the banking business under said laws, and that said bonds, as expressly provided by said laws, are exempt from taxation, and that there is no power in the Territory or any of its agents to tax the same.

24 Your orator further alleges that for the year 1888 the amount of its taxes upon the assessment as made by the board of equalization is the sum of — dollars, which said sum is largely in excess of the amount of taxes for which your orator is justly responsible for had said assessment been made justly and equitably and in accordance with law, which said sum so paid by your orator was paid to the said defendant Jose L. Perea, *ex officio* collector of taxes for the said county of Bernalillo.

Your orator further alleges that the said collector refused to accept said sum so paid in full satisfaction for the taxes due from your orator for the year 1888 or claimed to be due from it.

And your orator further alleges that the said tax assessor for the said county of Bernalillo assessed your orator unjustly and unlawfully and in violation of law upon its capital stock and surplus, making said assessment *in solido* against your orator and not against the respective owners of the shares of the capital stock of your orator, as required by law, for the year A. D. 1889, and likewise valued said property largely in excess of the amount and at a greater rate and upon a higher valuation than taxes are assessed on other moneyed capital in the hands of individual citizens and corporations in said Territory, and that its said property was not assessed, as required by law, uniformly and equitably and upon the same ratio of valuation as other property in said Territory

25 was valued and assessed for the purpose of taxation for the year 1889, but that an unjust and inequitable discrimination was made in the valuation of your orator's said property as compared with the ration or valuation generally in said Territory for the year 1889.

Your orator further alleges that its property was so assessed by the board of county commissioners of said county, sitting as a board of equalization for the year A. D. 1889, and that a copy of the assessment of your orator's property, as carried out upon the tax-rolls of said county for the year A. D. 1889, is filed herewith, marked Exhibit "C," and made a part of this bill.

Your orator further alleges that out of the total sum and valuation of the property assessed against it for the year A. D. 1889, as carried out upon the said tax-rolls, the sum of one hundred and forty-two thousand two hundred and ninety-two and fifty one-hundredth- dollars is made up of shares of stock of your orator, which said shares of stock are not under the laws of the United States subject to taxation as your orator's property, and can only be assessed as the individual property of the several respective shareholders of your orator, many of whom are non-residents of the Territory of New Mexico and heads of families, and that they are

thus deprived of any benefit of the exemption of three hundred dollars accorded to heads of families residents of the Territory.

And your orator further alleges that the sum of one hun-
26 dred and twenty-one thousand five hundred dollars of its capital stock is the property of non-residents, and that the total of its capital for the year 1889 was $142,292.50.

Your orator further alleges that said tax assessor and said board of equalization have assessed its surplus for the year 1889, consisting of twenty-five thousand dollars, which said assessment of its capital stock and surplus and other property is, as hereinbefore alleged, upon a valuation proportioned higher than the valuation placed upon other monied capital and other property generally in said Territory for the purpose of taxation, and that the same is not justly, uniformly, and equitably assessed with other property in said Territory.

And your orator further alleges that all other property in said county and Territory is not assessed at near so high a valuation upon its actual value as said tax assessor and board of equalization have assessed your orator's said property, and that other property in said Territory is not assessed upon an average of more than fifty per cent. of its actual value, and that it is so assessed systematically and continuously by the said assessor of said county and said board of equalization.

And your orator further alleges that the sum of fifty-three thousand two hundred and fifty-seven $\frac{81}{100}$ dollars of its capital stock and property belonging to it upon which it was so assessed as aforesaid is invested in Government bonds issued by the Government of the United States, the same being the security to the Govern-
27 ment of the United States and which by law are exempt from taxation, and that its capital stock is largely represented by said Government bonds and the said Government bonds go to make up the value thereof.

Your orator further alleges as aforesaid that for the year A. D. 1889, under the laws of the Territory of New Mexico, a large amount of property in said Territory is exempt from taxation in addition to the homestead exemption hereinbefore referred to, such as mines, mining claims bearing gold, silver, and other precious and useful metals, ditches, canals used for irrigating lands, and industrial pursuits. Your orator further alleges that the said taxes so unjustly and unlawfully assessed against your orator for the year A. D. 1889 have been carried out upon the tax-rolls of said county.

Your orator further alleges that the said tax and assessors' roll for the years A. D. 1888 and 1889 are now in the hands of the said defendant Jose L. Perea, as *ex officio* collector of said county of Bernalillo, and that the same have the force and effect of a judgment and execution, and that the said defendant threatens to levy and seize and distrain upon the property of your orator's for the balance of the taxes claimed for the year 1888 and the whole of the taxes for the year 1889 assessed against your orator.

And your orator further alleges that, having paid all the taxes for which it was liable for the year 1888, it now comes into court

and offers to pay all the taxes which can justly and lawfully
28 — assessed against it and for which it may be justly and lawfully liable for for the year 1889, and now tenders the same into court.

And your orator further alleges that should it pay the same so unlawfully demanded of it by virtue of the said assessment and bring suit at law for the recovery of so much thereof as is illegal and unjust that such suit would be unavailing, for the reason that your orator would have no remedy or means of collecting any judgment that it may recover against said county of Bernalillo or said Territory; that a portion of such taxes goes to different funds, and that your orator would be unable to sue the Territory for any part of the taxes payable to said Territory, and that the said collector refuses to receive or accept from your orator any portion of said taxes or any part thereof going to any particular fund or the part thereof going to the county of Bernalillo unless your orator pays the whole of the same and all of the taxes going to all of the said funds.

And your orator further alleges that the said assessment and said tax-roll are so made out that it is impossible to separate the property upon which your orator is justly and lawfully taxed and the taxes upon which *is* just and lawfully levied from the balance of the taxes assessed against your orator, but whatever sum may be ascertained by the court to be so justly due from your orator on account of taxes for the year 1889 your orator is ready and willing *and* bring the same into court and is ready to pay the same.

29 And your orator further alleges that it is a corporation created under the laws of the United States, and without express authority is conferred by the United States upon the Territory there is no power vested in the Territory or any State or municipal authority thereof to tax any property whatever belonging to your orator, and that no such authority has been conferred under and by virtue of the laws of the United States.

Your orator further alleges that under the terms of the laws of the Territory said defendant as such collector is empowered to sell your orator's real estate and issue to the purchaser thereof a certificate of sale, and thereafter, before the making and delivery of a deed to such purchaser or assignee, your orator, in order to redeem the same, would be compelled to pay the sums shown to have been paid by the person to whom such certificate was issued, together with all taxes subsequently paid by said purchaser, with interest thereon at the rate of three per cent. per month.

And your orator further alleges that after the lapse of three years the collector then in office, upon the request of the holder of such certificate, would be compelled to execute and deliver a deed for the property by such certificate shown to have been sold, and said deed, when so executed and delivered, would be *prima facie* evidence of all the facts necessary to convey to the grantee named therein a valid title to the property thereby conveyed.

30 And your orator further alleges that should they permit their property to be sold under said illegal assessments they

would have to redeem the same within said period of three years or the deed so authorized would on its face convey their title to the said property and be a cloud upon your orator's title to its property.

Wherefore, inasmuch as your orator is remediless in a court of law, it brings this its bill of complaint in your honor's court of chancery and pray that your honor will cause to issue, under the seal of this honorable court, a writ of injunction enjoining and restraining the said Jose L. Perea, sheriff and *ex officio* collector of said county of Bernalillo, as aforesaid, and any of his deputies, his agents and employees, from in any manner further proceeding to collect and from taking any steps to further the collection of the said tax and the items of said taxation as aforesaid for the year A. D. 1888 not already paid and all of the tax assessed against it for the year A. D. 1889, or so much thereof as is unlawfully and unjustly assessed.

And may it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, Jose L. Perea, sheriff and *ex officio* collector as aforesaid, commanding him that he, on a day to be therein named and under a penalty to be therein inserted, *to* be and appear before this honorable court and then and there full, true, and perfect answer make to the matters and things contained herein, but not under oath, the answer under oath being hereby expressly waived.

81 Your orator further prays that your honor will cause to be issued forthwith, under the seal of this honorable court, a preliminary writ of injunction enjoining and restraining the said defendant, Jose L. Perea, as such sheriff and *ex officio* collector of said county of Bernalillo, from enforcing the collection of the said taxes so assessed as aforesaid by virtue of the assessment-rolls in his possession until the further orders of this court therein, and thus your orator will ever pray.

WILLIAM B. CHILDERS,
Solicitor for Complainant.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

On this the 26th day of November, A. D. 1889, before me personally appeared S. M. Folsom and made oath that he is vice-president of The Albuquerque National Bank, the complainant in the above-entitled cause; that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

S. M. FOLSOM.

Subscribed and sworn to before me this 26th day of November, A. D. 1889.

[SEAL.]

E. W. DOBSON,
Notary Public.

EXHIBIT A.

No. 2714¼.

32 ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA.

EXHIBIT A.

Filed in my office this 29th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

Precinct No. 12—*Property Return,* 1889, *of the Albuquerque National Bank.*

Recapitulation.

Value of real estate	$
Value of personal property	$
Total	$
Sum exempt if head of family and resident of Territory	$300 00
Amount subject to tax	$
Poll tax	1 00
Total	$

Examined and approved by the board of county commissioners June 11, 1889.

VALINTINE C. DE BACA,
Chairman Board of County Commissionors.

Schedule of real and personal property belonging to Albuquerque National bank, a resident of the county of Bernalillo, Territory of New Mexico, on the first day of March, 1889.

* * * * * * *

33 *Oath of Affirmation.*

TERRITORY OF NEW MEXICO,
County of Bernalillo.

I, S. M. Folsom, vice-president of the Albuquerque Nat'l bank, do solemnly swear (or affirm) that I am a resident of the county of Bernalillo; that, according to the best of my knowledge and belief, the within list contains a full and correct statement of all property subject to taxation in the Territory *of* which I or any firm of which I am a member or any company or corporation of which I am president, cashier, secretary, or managing agent own, possess, or control and which is not already assessed.

S. M. FOLSOM.

Subscribed and sworn to before me this — of ——, 1889.
PERFECTO ARMIJO, *Assessor.*

Real Estate.

City and town lots and houses, fraction, or other description.	Addition.	Lots.	Block.
About 3⅓ acres of land, bounded north by Cornnel road, south by land of Perfecto Armijo Bros., west by land of Jose Ignacio Garcia, east by lands of Armijo Bros., said land being in precinct No. 12. All real estate is represented in the stock of said bank.	N. M. Town Co. Do.	21 to 23 5 and 6	34 43

Personal Property.

Shares of stocks and corporations: 1750 shares, representing capital stock of this bank, at 81 $\frac{3}{100}$ per share	$142,192 50

34 EXHIBIT C.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA.

EXHIBIT C.

Filed in my office this 29th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

Paste " Exhibit C to assessment-roll, '89."

(See table marked p. 34.)

35 And thereafter was filed, on the 4th day of December, 1889, in the office of said clerk, by the parties hereto, a demurrer and answer in the words and figures following, to wit:

TERRITORY OF NEW MEXICO:

Second District Court, November Term, A. D. 1889.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Defendant.
No. 2714¼.

Demurrer and Answer.

Filed in my office this 4th day of December, 1889.
CHAS. F. HUNT, *Clerk.*

EDWARD L. BARTLETT,
Solicitor General,
V. A. GREENLEAF,
District Attorney,
Solicitors for Defendant.

Subscribed and sworn to before me this — of ——, 1889.
PERFECTO ARMIJO, *Assessor.*

Real Estate.

City and town lots and houses, fraction, or other description.	Addition.	Lots.	Block.
About 3¾ acres of land, bounded north by Cornnel road, south by land of Perfecto Armijo Bros., west by land of Jose Ignacio Garcia, east by lands of Armijo Bros., said land being in precinct No. 12. All real estate is represented in the stock of said bank.	N. M. Town Co. Do.	21 to 23 5 and 6	34 43

Personal Property.

Shares of stocks and corporations: 1750 shares, representing capital stock of this bank, at 81 $\frac{31}{100}$ per share	$142,192 50

34 EXHIBIT C.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA.

EXHIBIT C.

Filed in my office this 29th day of Nov., 1889.
CHAS. F. HUNT, *Clerk.*

Paste "Exhibit C to assessment-roll, '89."

(See table marked p. 34.)

35 And thereafter was filed, on the 4th day of December, 1889, in the office of said clerk, by the parties hereto, a demurrer and answer in the words and figures following, to wit:

TERRITORY OF NEW MEXICO:

Second District Court, November Term, A. D. 1889.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Defendant.
No. 2714¼.

Demurrer and Answer.

Filed in my office this 4th day of December, 1889.
CHAS. F. HUNT, *Clerk.*

EDWARD L. BARTLETT,
Solicitor General,
V. A. GREENLEAF,
District Attorney,
Solicitors for Defendant.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court, November Term, A. D. 1889.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Respondent. } No. —.

36 *Demurrer to Portions and Answer to the Residue of the said Supplemental Bill.*

To the Honorable William D. Lee, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof:

This respondent, by protestation, not confessing or acknowledging all or any of the matters and things in such portions of said supplemental bill of complaint contained as are here demurred *as* to be true in manner and form as the same are therein and thereby set forth and alleged, demurrers to portions of said bill and answers the causes therefor as follows, to wit:

First. To that portion of said bill on page one thereof which states that the property of the complainant cannot be assessed at its par value or the surplus at its full money value, because the same as matter of law does not entitle the complainant to any relief.

2nd. To that portion of the said supplemental bill on the bottom of page two and the top of page three which set- forth and all other property in said county and Territory is not assessed at near so high a valuation upon its actual value as the said board of equalization assessed the complainant's property, because the same is not such an allegation as entitles the complainant to any relief, either at law or in equity.

3rd. To that portion of said supplemental bill upon page three which sets forth that bank stock, as the complainant is informed and believes, in the county of San Miguel, in said Territory, is
37 assessed at less than eighty-five per cent. of its actual value, for the reason that such allegation as a matter of law entitles the complainant to no relief whatever, and is immaterial.

4th. To that portion of said supplemental bill upon page three which sets forth that some of the capital stock of the complainant is owned by non-residents of the Territory, for the reason that such fact is no reason why the complainant should obtain any relief against paying its taxes, and because as matter of law such non-residents are not entitled to any exemption.

5th. To that portion of said supplemental bill on pages five and six which sets forth that many of the stockholders of the complainant are non-residents of the Territory and heads of families, and that they are thus deprived of any benefit of the exemption of three hundred dollars, for the reason that non-residents are not as matter of law entitled to any such exemption.

6th. To that portion of said supplemental bill on page six which sets forth that a large portion of the capital stock of the complainant

is invested in Government bonds issued by the Government of the United States, for the reason that as matter of law such investment is no justification or reason why the complainant should have such portion of its property exempt from taxation.

7th. To that portion of said supplemental bill on the top of page nine thereof which sets forth that the complainant is a depository of the Government of the United States, for the reason that such fact in no way relieves or exempts the complainant from paying
38 its just proportion of the taxes of the Territory of New Mexico; and, further, to that portion of said supplemental bill on page nine which sets forth that the purchaser of the complainant's lands or property sold by the sheriff would have to be redeemed by paying the sums paid therefor by the purchaser, for the reason that the same in no manner entitles the complainant to relief in equity; and, further, to that portion of said supplemental bill on page nine which sets forth that after three years the collector then in office would have to issue a deed to the purchaser to any property so sold, for the reason that such fact is no ground of equitable relief, such as is prayed for in said supplemental bill; and, further, he demurrers to that other portion of said supplemental bill on page 9 thereof which sets forth that a deed given by the collector after three years, as set forth in said bill, would be a cloud upon the complainant's title, for the reason that, although such be the fact, it does not entitle the complainant to relief in a court of equity against paying the taxes for which the property would be so sold.

Wherefore, and for divers other good causes of demurrer appearing — the portions of said supplemental bill of complaint above set forth, this respondent demurrers as aforesaid to each and every portion of said bill so above specified, and to all matters and things in such portions contained, and prays judgment of this honorable court whether he shall be compelled to make any further or other answer to said portions of said bill, and he prays to be dis-
39 missed as to such portions with his reasonable costs in this behalf sustained.

V. A. GREENLEAF,
District Attorney.
EDWARD L. BARTLETT,
Solicitor General.

I certify that in my opinion the foregoing demurrer of Jose L. Perea, the respondent, to the supplemental bill of complaint of The Albuquerque National Bank, complainant, is as to the portions demurred to well founded in law and proper to be filed in the above cause.

V. A. GREENLEAF,
District Attorney,
EDWARD L. BARTLETT,
Solicitor General, Solicitor- for Respondent.

TERRITORY OF NEW MEXICO,
County of Bernalillo.

Affiant, V. A. Greenleaf, counsel for respondent, of lawful age, being first duly sworn, upon his oath deposes and says that he is the attorney and counsel of respondent in the above-entitled cause, and that his demurrer above set forth is not interposed for delay but in good faith, and that respondent is not present at this time to sign for himself.

V. A. GREENLEAF.

Subscribed and sworn to before me this 4th day of December, A. D. 1889.

[SEAL.] CHAS. F. HUNT,
Clerk of Court within and for said County.

And as to the other matters and things set forth and alleged in said bill of complaint this respondent, now and at all times
40 hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as this respondent is advised it is or are material or necessary for him to make answer unto, answering, says:

This respondent admits the incorporation of the complainant, as set forth in said bill, and further admits that he, the respondent, is the sheriff and *ex officio* collector of said county of Bernalillo.

This respondent also admits that the complainant is engaged in the banking business, as set out in said bill, and admits that he made his return upon its property for taxation in said county within the time required by law, as set out in Exhibit "A" to said bill.

This respondent, further answering, denies that the complainant protested against the assessment of the value of its property, at the time of making its said return of its capital stock and its surplus, at any greater rate of valuation than other property so assessed in the Territory of New Mexico and in said county of Bernalillo, and denies that such was done; but, on the contrary, alleges and charges the fact to be that the same was assessed in strict accordance with law and *that* no higher or greater rate than other property in said county or Territory.

And this respondent, answering further, denies that the laws of the United States or of the Territory of New Mexico require
41 that the stock of the complainant should be assessed and taxed to the respective owners thereof according to their individual holdings against said bank and not as it is charged in said bill.

This respondent, answering further, admits that the said assessor assessed the shares of the capital stock of the complainant at its value in one sum, and thereupon the complainant appealed to the board of county commissioners of said county of Bernalillo, who were sitting as a board of equalization and reduced said assessment

of complainant's property to eighty-five per cent. of the par value of the surplus, as set forth in said Exhibit "A."

This respondent, answering further, denies that there was any discrimination whatever in the value of the complainant's property as compared with the value of other property of other individuals and moneyed capital in said county, in said Territory.

And this respondent, answering further, denies that by law the shares of its capital stock can only be assessed to the individual owners thereof and not against the complainant, and that the same is not subject to the assessment against the complainant and in the complainant's name.

This respondent, answering further, states that he is without knowledge or information sufficient to form a belief, and therefore denies, that a large portion or any portion of the capital stock of the complainant is owned by non-residents of the Territory of New Mexico, many of whom are heads of families, etc., as alleged
42 in said bill, but this respondent admits that heads of families resident in New Mexico are entitled to an exemption not exceeding two hundred dollars in full, but denies that non-residents are so entitled to such exemption.

This respondent, answering further, says that he is without knowledge or information sufficient to form a belief, and he therefore denies, that the capital stock of said complainant represents mines, mining claims bearing gold, silver, and other precious and useful metals, ditches, canals, and flumes, etc., and he further denies that the same would be exempt from taxation if owned by said complainant as a banking corporation under the laws of the United States.

And this respondent, answering further, states that he is without knowledge or information sufficient to form a belief, and therefore denies, that the complainant is an owner and holder of a large amount of Government bonds or any amount whatever, or that the same, if held by the complainant, would become subject to taxation by the territorial laws; and the respondent, answering further, denies that in the assessment made of the complainant's property no bonds of the complainant were taken into consideration or assessed.

And this respondent, answering further, denies that the assessment made, as in said bill alleged, by the board of equalization against the complainant for the sum of — dollars is largely in excess of the amount of taxes for which the complainant is justly responsible, and respondent further denies that that said assessment
43 was made unjustly or inequitable, but, on the contrary, alleges and charges the fact to be that said assessment was made in strict accordance with the laws of the Territory and United States in the premises.

This respondent, answering further, admits that he refused to accept the sum of money tendered him by the complainants, as alleged in said bill, in full satisfaction for their taxes for the year A. D. 1889; but he denies that the assessor of said county of Bernalillo assessed the complainant unjustly and unlawfully, in viola-

tion of law, upon its capital stock and surplus *in solido*, as set forth in said bill of complaint; but, on the contrary, he alleges and charges the fact to be that the assessor made said assessment legally and in strict accordance with law.

And this respondent, answering further, denies that the assessor for said county of Bernalillo valued the property of the complainant largely in excess of its actual value and at a greater rate and a higher valuation than taxes are assessed upon other moneyed capital in the hands of other individual citizens and other corporations in said Territory, or that its said property was not assessed, as required by law, uniformly and equitably and upon the same valuation as other property in said Territory was valued and assessed for the purposes of taxation for the year 1889.

This respondent, answering further, says that he is without knowledge or information sufficient to form a belief, and therefore he denies, that — dollars of the capital stock of the com-
44 plainant is the property of non-residents and the total of its capital stock for the year 1889 was — dollars, and further denies that the surplus of the complainant's capital stock was unjustly or inequitably assessed, as set forth in said bill.

This respondent, answering further, admits that the taxes and assessors' roll for the year 1889 is now in his hands and possession, as *ex officio* collector of the county of Bernalillo, and that the same is the force and judgment of an execution; and this respondent further admits that he does threaten — levy, seize, and distrain upon the property of the complainant for the balance of the taxes claimed for the year 1888 and for the whole of the taxes for the year 1889, and assessed against the complainant, and denies that the same are in any manner illegal; but, on the contrary, alleges and charges the fact to be that the same is in his possession in strict accordance with law; and this respondent, answering further, denies that said complainant has paid all the taxes for which it was legally liable for the year 1888, but, on the contrary, alleges that there is a large balance still due upon said account.

And this respondent, answering further, denies that the complainant has made an offer or tender of the amount of taxes which can be justly and legally claimed from him by this respondent, as such sheriff and *ex officio* collector.

And this respondent, answering further, admits that he refuses to receive the taxes so assessed against the complainant — pays the whole thereof, but he denies that the respondent would have
45 no remedy in the premises in case it paid its taxes as alleged in said bill, and further alleges and charges the fact to be that it is entitled or would be entitled to no remedy in case it so paid its taxes, the same being just and legal, as here in this answer alleged.

And this respondent, answering further, says that it is necessary for no reason whatever to separate the property upon which the complainant is justly and lawfully taxed.

And this respondent, answering further, denies that the Territory of New Mexico is without power to tax any of the property of the

complainant, because of the mere fact that it is a corporation organized for the purpose of banking under the banking laws of the United States.

This respondent, answering further, admits that, under the laws of the Territory, as such collector he is empowered to sell the complainant's real estate and issue to the purchaser a certificate of sale as in said bill alleged.

And this respondent, answering further, denies that the complainant is remediless in a court of law in the premises, and further denies that it has no cause of action whatever for the reasons stated in this answer, or that it is entitled to the injunction prayed for against this respondent, or any relief of any kind or character whatever.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged;
46 without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

——— ———,
Respondent.

V. A. GREENLEAF,
District Attorney,
EDWARD L. BARTLETT,
Solicitor General,
Solicitor- for Defendant.

And on the same day, to wit, on the 4th day of December, 1889, there was filed in the office of the clerk of said court a stipulation in the words and figures following, to wit:

Stipulation as to Pleadings.

District Court, Bernalillo County.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA, Sheriff. } No. 2714½.

Stipulation as to pleadings.

Filed in my office this 4th day of December, 1889.

CHAS. F. HUNT, *Clerk.*

47 In the District Court for Bernalillo County, Second Judicial District, Territory of New Mexico.

ALBUQUERQUE NATIONAL BANK, Complainant,
vs.
JOSE L. PEREA, Sheriff, *et al.*, Defendant-. } No. 2714¼.

It is hereby stipulated and agreed between the counsel for the parties to the above-entitled cause that case No. 2714, in the above court, wherein The First National Bank of Albuquerque is complainant, and Jose L. Perea is respondent, shall be considered at the same time as this suit, and that the pleadings in this cause shall be considered as filed in said case No. 2714 as well, and to be considered as the pleadings in that case.

W. B. CHILDERS,
Solicitor for Complainant.
V. A. GREENLEAF, *Dist. Att'y,*
EDWARD L. BARTLETT, *Sol. Gen'l,*
Solicitors for Respondents.

And thereafter was filed, on the 6th day of December, 1889, in the office of the clerk of said court, a stipulation in the words and figures following, to wit:

Stipulation.

District Court, Second Judicial District, Territory of New Mexico.

48 ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA, Sheriff. } No. 2714¼.

Stipulation.

Filed in my office this 6th day of Dec., 1889.
CHAS. F. HUNT, *Clerk.*

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court, Second Judicial District.

THE ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA, Sheriff, *et al.* } Chancery.

Stipulation.

It is agreed and stipulated by and between the complainant, by its solicitor, W. B. Childers, and the defendants, by their solicitor, E. L. Bartlett, the solicitor general, that the allegations in complainant's bill to which answer was filed be stricken out of the same—that is to say, so much of said bill as alleges a systematic undervaluation of property other than complainant's property, and a systematic discrimination in the assessment and valuation of com-

plainant's property, be stricken out of the same, and that defendants' answer be withdrawn; and thereupon the court sustains defendants' demurrer, and the complainant declines to amend or plead further, and the court renders a decree dismissing complainant's bill; to all of which complainant excepts and files its affidavit for an appeal, and prays *that* an appeal to the supreme court of the Territory of New Mexico, and which said appeal the court, by its order, grants.

49

WILLIAM B. CHILDERS,
Solicitor for Complainant.
EDWARD L. BARTLETT,
Solicitor General, for Respondents.

And thereafter, on the 6th day of December, A. D. 1889, at the November, A. D. 1889, term of said court, the following order and entry in said cause was made, to wit:

Now comes the complainant and asks the court for leave to amend complainant's original and supplemental bills by striking out all the allegations therein contained alleging that the assessor and board of equalization systematically discriminated in the valuation and assessment of complainant's property and capital stock and other property in said Territory, which leave is granted, and the amendment is ordered to be considered as made, and therefore the defendants, by their solicitor, withdraw their answer to said allegations in said bills contained and so stricken out as aforesaid.

And thereafter, to wit, on the 6th day of December, A. D. 1889, at the November term of court, the following proceedings in said cause were had and entered of record in words and figures as follows, to wit:

And now comes the complainants and defendants, by their respective solicitors, and the court, having heard the arguments of counsel upon the demurrer filed by the defendants to complainant's original and supplemental bills, doth sustain said demurrer; to which order of the court complainants excepts and declines to plead further. Wherefore the court doth order, adjudge, and decree that complainant's said bills be dismissed, and that defendants recover their costs in this behalf sustained, to be taxed, and that execution issue therefor.

50

And thereafter, to wit, on the 6th day of December, A. D. 1889, at the November term of said court, there was filed in the office of the clerk of said court an affidavit for an appeal in the words and figures following, to wit:

District Court, Bernalillo County.

ALBUQUERQUE NATIONAL BANK
vs.
JOSE L. PEREA *et al.*
} 2714½.

Affidavit for Appeal.

Filed in my office this 6th day of Dec., 1889.
CHAS. F. HUNT, *Clerk.*

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court of the Second Judicial District of the Territory of New Mexico for the County of Bernalillo, November Term, A. D. 1889.

THE ALBUQUERQUE NATIONAL BANK }
vs. } 2714½.
JOSE L. PEREA, Sheriff, *et al.* }

Affidavit for Appeal.

51 William B. Childers, of lawful age, being duly sworn, on oath deposes and says that he is the agent, attorney, and solicitor for the complainant in the above-entitled cause, and authorized as such to sue out and prosecute this appeal; and affiant further states that such appeal is not taken for the purpose of vexation or delay, but because affiant believes that the complainant and appellant is aggrieved by the judgment, decree, and decision of the district court.

WILLIAM B. CHILDERS.

Subscribed and sworn to before me on this the 6th day of December, A. D. 1889.

[SEAL.]

CHAS. F. HUNT,
Clerk 2nd Jud. Dist. Court.

And thereafter, to wit, on the said 6th day of December, A. D. 1889, at the November term of said court, the following order was made in words and figures as follows, to wit:

The court, having heard the affidavit for an appeal filed in this court read, doth order, adjudge, and decree that said appeal be granted.

TERRITORY OF NEW MEXICO:

Second Judicial District Court, County of Bernalillo.

I, Charles F. Hunt, clerk of said court, do hereby certify that the above and foregoing pages contain a true and correct and full and complete transcript of the record on appeal on file in my office in the case of The Albuquerque National Bank *versus* Jose L. Perea, sheriff, *et al.*, No. 2714½, Bernalillo county.

51½

Seal District Court, Second Judicial District, Territory of New Mexico.

In witness whereof I have hereunto set my hand and the seal of said court, this 6th day of December, A. D. 1889.

CHARLES F. HUNT, *Clerk.*

52 And afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, the seat of government of said Territory, on the first Monday of January, in the year 1890, the same being Monday, January

6, 1890, on the first day of said term, the same being Monday, January 6th, 1890, the following, among other, proceedings were had, to wit:

ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.
} 415. Appeal from Bernalillo County.

By agreement of said parties, by their respective solicitors, it is ordered that said appellant be, and is hereby, given until next Monday morning to assign errors and file briefs herein.

And afterwards, at the regular term of said supreme court last aforesaid, on the eighth day of said term, the same being Tuesday, January 14th, 1890, the following, among other, proceedings were had, to wit:

ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.
} 415. Appeal from Bernalillo County.

By agreement of said parties, it is ordered that the time for said appellant to file briefs herein be, and is, extended further until January 17, 1890, and also to file assignment of errors.

And afterwards, to wit, on the 18th day of January, 1890, there was filed in the office of the clerk of said supreme court complainant's assignments of error in said cause; which said assignments are in the words and figures following, to wit:

53 ALBUQUERQUE NATIONAL BANK, Complainant and Appellant,
vs.
JOSE L. PEREA *et al.*, Defendants and Appellees.

In the Supreme Court of the Territory of New Mexico, January Term, 1890.

Complainant's Assignments of Error.

First. The court erred in sustaining defendants' demurrer to the supplemental bill.

Second. The demurrer did not answer the allegations that the assessment was upon complainant's capital stock and surplus, and was *in solido* and against complainant and not against its shareholders, and was therefore void.

Third. The demurrer did not apply to the original bill, and the court therefore erred in dismissing the original bill.

Fourth. Neither of the assessments for either of the years 1888 or 1889, alleged to have been made on the capital stock, surplus, and personal property of complainant, against the complainant and not against its shareholders, are valid, but are void on their face, and both the assessor and the board of county commissioners, as a board

of equalization, were wholly without jurisdiction to make the same, and the pretended tax-rolls referred to in complainant's bills confer no authority on the defendant collector to enforce the payment of said tax assessments. The demurrer should therefore have been overruled.

And afterwards, at a regular term of said supreme court last aforesaid, on the twenty-second day thereof, the same being Thursday, January 30, 1890, the following, among other, proceedings were had, to wit:

ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.
} 415. Appeal from Bernalillo County.

This cause coming on to be heard upon the transcript of
54 record, assignment of errors, and briefs filed herein, is argued by Mr. Childers, for said appellant, and by Mr. Bartlett, solicitor general, for said appellees, and submitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, began and held at Santa Fé, the seat of government of said Territory, on the first Monday of January, eighteen hundred and ninety-one, the same being Monday, January 5th, 1891, on the seventh day of said term, the same being Monday, January 12th, 1891, the following, among other, proceedings were had, to wit:

THE ALBUQUERQUE NATIONAL BANK, OF ALBUQUERQUE, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.
} 415. Appeal from Bernalillo County.

This cause, coming on to be heard upon the record, the assignment of errors, and briefs filed, is argued by counsel—Mr. Childers appearing in behalf of said appellant and Mr. Bartlett, solicitor general, in behalf of said appellees—and submitted to the court. The court, not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, at the regular term of said supreme court last aforesaid, on the twenty-first day of said term, the same being Wednesday, January 28th, 1891, the following, among other, proceedings were had, to wit:

ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.
} 415. Appeal from Bernalillo County.

This cause having been argued by cousel and submitted to and

taken under advisement by the court at a former day of the
55 present term, the court, being now sufficiently advised in the premises, announces its decision, by chief justice O'Brien, affirming the decree of the court below, for reasons stated in the opinion on file—Associate Justices McFie, Freeman, and Seeds concurring: It is therefore ordered, adjudged, and decreed by the court that the decree in this cause of the district court of Bernalillo county, whence this cause came into this court, be, and the same hereby is, affirmed, and that in accordance therewith said bill and supplemental bill of complaint be, and they hereby are, dismissed, and that said appellant pay the costs of this suit, as well in the lower court as in this court, to be taxed, and that execution issue therefor.

And afterwards, to wit, on the 31st day of January, 1891, there was filed in the office of the clerk of said supreme court a motion for appeal to the Supreme Court of the United States; which said motion is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, January Term, 1891.

ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.

Now comes said appellant, by its solicitor, and presents to the court here an affidavit in the above-entitled cause, showing that the validity of a statute and an authority exercised under the United States is drawn in question in said case, and moves the court to grant it an appeal from the decree of this court in this cause to the Supreme Court of the United States.

WILLIAM B. CHILDERS,
Solicitor for Appellant.

And afterwards, to wit, on the 31st day of January, 1891, there was filed in the office of the clerk of the supreme court of the
56 Territory of New Mexico an affidavit in support of motion for an appeal to the Supreme Court of the United States; which said affidavit is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, *County of Santa Fé,* } *ss:*

In the Supreme Court of the Territory of New Mexico.

THE ALBUQUERQUE NATIONAL BANK, Appellant,
vs.
JOSE L. PEREA *et al.*, Appellees.

William B. Childers, solicitor for appellant, of lawful age, being duly sworn, deposes and says that in his opinion a statute of and an authority exercised under the United States is drawn in question in the above-entitled cause.

WILLIAM B. CHILDERS.

Subscribed and sworn to before me this 31st day of January, A. D. 1891.

[Seal Sup. Court of N. M.]

S. BURKHART,
Clerk Supreme Court.

And afterwards, to wit, on said 31st day of January, 1891, there was filed in the office of the clerk of the supreme court of New Mexico a motion for said court to make findings of fact in said cause; which said motion is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, January Term, 1891.

ALBUQUERQUE NATIONAL BANK, Complainants and Appellants,
versus
JOSE L. PEREA, *et al.*, Defendants and Appellees.

Now comes the appellant in the above-entitled cause and moves the court to make findings of facts in said cause in accordance with the requirements of the statute regulating appeals in
57 chancery cases to the Supreme Court of the United States.

WILLIAM B. CHILDERS,
Attorney for Appellants.

Upon the application to the court to make findings of fact, the court declines to make the same upon the ground that such findings are unnecessary.

JAMES O'BRIEN,
Chief Justice.

And afterwards, to wit, on said 31st day of January, 1891, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a bond to James H. McKenney, clerk of the Supreme Court of the United States, to cover all costs which may accrue in said Supreme Court of the United States; which said bond was and is in the words and figures following, to wit:

Know all men by these presents that we, William B. Childers, of Albuquerque, in the county of Bernalillo and Territory of New Mexico, and N. B. Laughlin, of Santa Fé, in the county of Santa Fé and Territory of New Mexico, and George C. Preston, of Santa Fé, in the county of Santa Fé and Territory of New Mexico, are held and firmly bound unto James H. McKenney, clerk of the Supreme Court of the United States, in the full and just sum of two hundred and fifty dollars, current money of the United States, to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirty-first day of January,

in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at Santa Fé, New Mexico, in a suit depending in the supreme court of the Territory of New Mexico, between The Albuquerque National Bank, appellant, and Jose L. Perea, sheriff of the county of Bernalillo *et al.*, appellees, and the said appel-
58 lant having obtained an appeal to remove the said cause to the Supreme Court of the United States, decree having been rendered against said appellant by said supreme court of the Territory of New Mexico, and the said appellant having filed a transcript of record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the decree in the aforesaid suit:

Now, the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said James H. McKenney, clerk as aforesaid, and charged to the said appellant in the prosecution of the said appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

WILLIAM B. CHILDERS.
NAPOLEON B. LAUGHLIN.
GEORGE C. PRESTON.

Sealed and delivered in presence of—
S. BURKHART.

I, James O'Brien, chief justice of the supreme court of the Territory of New Mexico, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

JAMES O'BRIEN,
Chief Justice of the Supreme Court of the Territory of New Mexico.

59 And afterwards, at the regular term of said supreme court of the Territory of New Mexico last aforesaid, on the twenty-fourth day of said term, the same being Saturday, January 31st, 1891, the following, among other, proceedings were had, to wit:

ALBUQUERQUE NATIONAL BANK, Appellant, *vs.* JOSE L. PEREA, Sheriff and *ex Officio* Collector of the County of Bernalillo, and Clifford L. Jackson, District Attorney for the Second Judicial District of New Mexico, Appellees.	415. Appeal from District Court of Bernalillo County.

Now comes said complainant and appellant, by its solicitor, Mr. Childers, and moves the court to grant it an appeal from the decree of this court to the Supreme Court of the United States for reasons

stated in its motion and affidavit on file; and it appearing to the court by said affidavit and motion that the validity of a statute and an authority exercised under the United States is drawn in question in this cause, the court grants said motion. It is therefore ordered by the court that said appellant be, and hereby is, granted an appeal from the decree of this court to the Supreme Court of the United States, and thereupon the said appellant moves the court to make and certify a statement of facts in this cause to said Supreme Court; and the court denies said motion for the reason that it does not consider such statement necessary.

And be it further remembered that on the 28th day of January, A. D. 1891, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico the opinion of the judges of said court in said cause; which said opinion is in the words and figures following, to wit:

60 In the Supreme Court of the Territory of New Mexico, January Term, 1891.

THE ALBUQUERQUE NATIONAL BANK, Appellant, *vs.* JOSE L. PEREA *et al.*, Appellees. } 415. Appeal from District Court, County of Bernalillo.

William B. Childers, solicitor for appellant; E. L. Bartlett, solicitor general, solicitor for appellees.

Syllabus.

1. The shares of stock of a national bank are taxable to the owners, and the bank is not liable primarily, or as the agent of the shareholders, under the act of Congress or the revenue laws of this Territory, for the payment of a tax levied upon such shares.
2. But if such bank, through its proper officers, voluntarily list such shares as the property of the bank for taxation, and the taxing officers of the Territory, in pursuance of such erroneous listing, tax the same in the name of the bank, equity will not relieve the bank from the payment of such tax by enjoining its collection in the absence of a proper application to all the statutory tribunals authorized to hear such matter and determine and grant the proper relief.
3. Equity will not restrain by injunction the collection of a tax on the ground of excessive valuation unless the party complaining has exhausted his legal remedies.

Opinion of the Court.

The complainant, on the third day of November, A. D. 1888, filed its bill of complaint in the district court for the county of Bernalillo against the defendants, Jose L. Perea, sheriff and *ex officio* collector of taxes, and Clifford L. Jackson, district attorney of said county, for the purpose of obtaining an injunction restraining them from

enforcing the collection of certain delinquent taxes assessed to the complainant.

61 The bill in substance alleges that complainant made due returns to the county assessor of all its property for taxation; that at such time it protested against the assessment of its property, to wit, its capital stock and surplus, at any higher rate of valuation than other property taxable in said county, and that it ought not to be assessed at its par value—that is: "That its stock could not be assessed at par and its surplus at its full money value, because other property in said county and Territory is not assessed at its full value."

That the assessor, disregarding such protest, assessed said property at its full value; that, upon complainant's appeal from the action of the assessor to the board of county commissioners, sitting as a board of equalization, the assessment on its surplus was reduced to 85 per cent. of its par value, whilst that of its capital stock was left unchanged; that its property valuation then stood as follows:

Capital stock	$100,000 00
Surplus	10,000 00
Total	$110,000 00

The bill proceeds: "That all other property in said county and Territory is not assessed at near so high a valuation upon its actual value as said board of equalization assessed your orator's said property; that the average valuation of other property in the hands of individuals and other corporations in said county and Territory does not exceed seventy per cent., and that it is so assessed systematically and continuously by the said assessor of said county and said board of equalization, and no valuation estimated upon its actual value of at least thirty per cent."

That bank stocks in a neighboring county are assessed at less than eighty-five per cent. of their value; that such discrimination is inequitable, unjust, and unlawful; that the amount of taxes upon said equalized assessment is the sum of $2,189.00; that such amount, if lawfully and equitably assessed, would be reduced to $1,532.30, which sum complainant brings into court and tenders

62 to defendant Perea; that said defendant refused to accept the same, and threatened to levy upon complainant's property to enforce the payment of the full amount so assessed.

The bill continues: "Your orator further alleges that should it pay the sum so unlawfully demanded of it by virtue of said assessment and bring suit at law for the recovery thereof as *is* illegal and unjust, such suit would be unavailing, for the reason that any judgment recovered by your orator against said county of Bernalillo or Territory of New Mexico would be paid in warrants of the said county and Territory, which said warrants are not worth their face value, but are sold upon the market at a discount, there being no funds in the treasury with which to pay the same if presented." The bill then informs the court of the legal effect of a forced sale

of complainant's property. Then follows the prayer for a writ of injunction, etc.

On November 29th, 1889, complainant, by leave of the court, filed a supplemental bill containing additional allegations in substance as follows:

That the shares of its capital stock can only be assessed to the individual owners thereof, and are not subject to assessment and taxation as the property of the bank; that a large portion of such capital stock is owned by non-resident heads of families; that a large portion of complainant's capital stock is invested in Government bonds, etc.

Defendants demurred to some and answered other portions of the bill. The parties then filed a stipulation, in accordance with which complainant struck from its original and supplemental bills all allegations that the assessor and board of equalization unjustly discriminated in the valuation and assessment of complainant's property. Defendants then withdrew their answer and stood upon their general demurrer to the bills as amended. The demurrer was sustained and judgment entered dismissing the bill. The cause is in this court by appeal from such judgment of dismissal.

63 The appellant assigns as error:

First. The order of the court below sustaining defendants' demurrer to the supplemental bill.

Second. The demurrer did not answer the allegations that the assessment was upon complainant's capital stock and surplus and was *in solido* and against complainant and not against the shareholders and was therefore void.

Third. The demurrer did not apply to the original bill, and the court therefore erred in dismissing the same.

Fourth. Neither of the assessments for either of the years 1888 or 1889, alleged to have been made on the capital stock, surplus, and personal property of the complainant against the complainant and not against the shareholders, is valid, but they are void on their face, and both the assessor and board of county commissioners, sitting as a board of equalization, were wholly without jurisdiction to make the same, and the pretended tax-rolls referred to in complainant's bills confer no authority on the defendant collector to enforce the payment of said tax assessment.

We shall consider the four assignments together.

The statutes of the Territory, sections 2822, 2823, 2824, and 2825, Compiled Laws, 1884, impose the duty upon the assessor to make a proper return of all taxable property in his county, and require all taxable inhabitants to furnish such assessor with a list of all their taxable property, duly verified.

The complainant made and delivered to the assessor such list, embracing the property referred to in the bill, including the shares of its capital stock. A certain percentage was extended on all this property at its par value for the purpose of taxation. No complaint was ever made to the assessor or to the county board of equalization that complainant did not own the property so voluntarily listed. Its sole objection was that its property had been assessed higher

than similar property owned by other parties, and that such discrimination was illegal. The public officers had a right to
64 assume that the bank had no other grievance to redress. It never hinted that it had been mistaken in listing the shares of its capital stock as its individual property instead of the property of its shareholders. In such case, when complainant had had ample opportunity to have its error corrected by the proper statutory tribunal, it would be unfair to the public interests to allow it for the first time in its supplemental bill in this suit to set up as the basis of a bill in equity to restrain the collection of a tax its own mistake, that misled the revenue officers of the Territory, and its subsequence negligence in failing to ask the proper tribunal to relieve it from the consequences thereof.

Admitting that the shares of its capital stock should not be assessed *in solido* to it, but to the respective owners according to interest, we hold that it cannot be heard in this suit to complain of such erroneous assessment. Complainant, and not the public, should be made to suffer the consequences of such mistake.

In considering the other points presented by the record, to wit, that the property taxed was rated at a higher valuation than similar property owned by individuals and other private corporations, it does not appear that such property was valued higher than its market value, but that it was valued too high in comparison with similar property owned by others. We hold that such inequality alone does not afford ground for equitable relief in the present case. It was complainant's duty to apply to all the tribunals established by the laws of the Territory to grant the desired relief. See ch. 73, Laws of 1887.

Failing in this, equity will not restrain the collection of the tax on account of such errors.

Myer *vs.* Rosenblatt, 78 Mo., 495.

If the county board refused complainant the reduction demanded and appeal lay to the territorial board, and having failed to take such appeal in the manner prescribed by the statute, complainant is not entitled to the relief sought.

65 The foregoing views are, in our opinion, a sufficient answer to all the substantial grounds of error presented by the record. It follows that the judgment appealed from is affirmed.

JAMES O'BRIEN,
Chief Justice.

We concur:

A. A. FREEMAN,
Associate Justice.

EDWARD P. SEEDS,
Associate Justice.

I concur in the result.

J. R. McFIE,
Associate Justice.

UNITED STATES OF AMERICA,
Territory of New Mexico.

I, H. S. Clancy, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing is a true and complete copy of the record entries of proceedings had, together with all papers and the opinion filed in the cause herein mentioned, as the same now appear of record and on file in my office.

Seal Supreme Court, Territory of New Mexico.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the Territory of New Mexico, at Santa Fé, New Mexico, this 13th day of March, A. D. 1891.

H. S. CLANCY, *Clerk.*

Endorsed on cover: Case No. 14573. New Mexico Territory supreme court. No. 1107. The Albuquerque National Bank, appellant, *vs.* Jose L. Perea, sheriff and *ex officio* collector of the county of Bernalillo, *et al.* Filed April 11, 1891.

147,987

Office Supreme Court U. S.
FILED.
JAN 27 1892
JAMES H. McKENNEY,
CLERK.

RECORD, CASE No. 14,573.

Supreme Court of the United States.

OCTOBER TERM, 1891.

TERM No. 1107.

THE ALBUQUERQUE NATIONAL BANK,
Appellant,

vs.

JOSE L. PEREA,
Sheriff and ex-Officio Collector of the County of Bernalillo, et al.

Appeal from the Supreme Court of the Territory of New Mexico.

APPELLANT'S BRIEF.

WM. B. CHILDERS,
Solicitor for Appellant.

ALBUQUERQUE, N. M.
G. F. ALBRIGHT, LAW AND COMMERCIAL PRINTER.
1892.

RECORD, CASE No. 14,573.

Supreme Court of the United States.

OCTOBER TERM, 1891.

TERM No. 1107.

THE ALBUQUERQUE NATIONAL BANK,
Appellant,

vs.

JOSE L. PEREA,
Sheriff and ex-Officio Collector of the County of Bernalillo, et al.

Appeal from the Supreme Court of the Territory of New Mexico.

APPELLANTS BRIEF.

STATEMENT.

JURISDICTION.

This is a suit in equity to enjoin the collection of taxes assessed against the complainant, the Albuquerque National Bank, for the years A. D. 1888–9, for municipal, County and Territorial purposes. The total amount of the tax for 1888 was $2,189—the total for 1889 was $3,713.76 and the penalty under the statute of New Mexico for non-payment from the period of delinquency—the first November in each year, is twenty-five per centum per annum. There is an inadvertent omission to state the amount of the tax for 1888, which was paid to the assessor as alleged in the supplemental bill (page 13 of Record), as a fact which will be conceded by counsel for Appellee, it was the sum of $1532.30—the amount alleged in the original bill to have been tendered (Record page 3.) This was paid under a stipulation not filed and therefore not a part of the record. This is immaterial, however, for the supplemental bill alleges that the tax rolls for both years were at the time of filing the supplemental bill in the hands of the collector, and that he was threatening to distrain for the balance of the taxes for 1888 and the whole of the taxes for 1889, and that both of said rolls had the effect of judgment and execution liens on complainant's property, (Record page 14), and the bill prays for relief against both rolls.

The foregoing facts are set forth to show the jurisdiction of this Court by reason of the amount involved. The total amount with penalty up to November 1890, for balance of taxes for 1888, was $984.05 and the total amount of taxes for 1889, with penalty to November 1890, was $4,642.20, making the total amount of

taxes and penalty involved at the date of affirmance of the decree of the District Court by the Supreme Court of the Territory, exclusive of costs, in excess of $5,000. The date of the affirmance was January 28th, 1891. (Record page 29.)

While appellant in taking its appeal filed the affidavit that the validity of a statute and an authority exercised under the United States was drawn in question, it was not necessary to do so. Counsel, from subsequent examination of the decisions of this Court, is convinced that no such question of validity or authority arises in the case, but that is wholly immaterial, as the requisite amount to give this Court jurisdiction on appeal is shown to be involved.

Section 2859, Compiled Laws of New Mexico (1884) fixing the penalty on delinquent taxes is as follows:

> "On the first day of November the unpaid taxes for the current year shall become delinquent and shall draw interest at the rate of twenty-five per centum, but the collector shall continue to receive payments of the same with intenest, after the first day of November until the day of sale."

ALLEGATIONS IN PLEADINGS AND GROUNDS OF EQUITY JURISDICTION.

Complainant filed its original bill for relief against the enforcement of the assessment for the year 1888 on the 3rd day of November 1888 and the allegations in the original bill were in substance as follows: That the complainant was incorporated under the National Bank act; that it made a return upon its property for taxation to the assessor of the County as required by law,

a copy of the return is made a part of the bill marked exhibit "A," to this return was attached a protest—(Record pages 5, 6 and 7.) By this protest the complainant alleges "That said capital stock and surplus is taxable as the property of its shareholders, but the payment of said taxes may be exacted of the said bank the said bank hereby admits." The protest then states that said capital stock and surplus was taxable only on a uniform valuation with other property and that by making said return it did not admit that said capital and surplus was taxable at more than seventy per cent. of its par value—(Record page 7.) The return shows several pieces of real estate and the capital stock and surplus. The par value of the stock and surplus is $110,000. By reference to the assessment roll (page 8 of Record) Exhibit "C" to original bill, it will be seen that the real estate was not assessed separately, but it was treated as if represented by the capital stock and the whole $110,000. Capital stock and surplus was assessed against the bank in *solido*.

The bill refers to the protest filed with the return. The bill also alleges that complainant presented its said protest to the County Board of Equalization, and that the Board thereupon reduced the valuation of the surplus of $10,000 to 85 per cent of its par value. After this reduction was made the assessment stood as shown by exhibit "C" above referred to. The bill then proceeds to allege that there was a disdrimination in the valuation of complainant's capital stock and surplus, and other property in the hands of individuals in said County and Territory, and then proceeds to allege that the Collector was threatening to distrain for the amount of the tax; that the tax roll was a lien by

statute on complainant's property; that he was empowered to levy upon and sell complainant's real estate; issue a certificate to the purchaser; that after three years the purchaser would become entitled to a deed; and also alleges facts to show that complainant could not get relief by paying the tax and suing for its recovery; and prayed an injunction restraining the collection of the tax.

Upon the filing of the bill a rule was ordered requiring the defendants to show cause why the injunction should not be granted. No return was ever made and thus the record stood until the 19th of November, 1888, when complainants filed a petition asking leave to file a supplemental bill, and thereupon the supplemental bill was filed. This supplemental bill alleges, both as to the assessment for 1888 and 1889, that there was a discrimination between the valuation of complainant's property for taxation and that of other individuals and corporations in said County and Territory. And furthermore explicitly alleged that bank stock could not be assessed *in solido* against a *National bank* and could *only be assessed against the shareholders —not against the bank as if it were the owner thereof.* (Record page 12, paragraph 22.)

The bill also alleges that most of its stock is held by *non-residents of New Mexico;* that *residents* are *allowed homestead exemptions*, of the benefit of which, complainant's stockholders were deprived; that other classes of property such as mines, ditches, canals, and flumes, were also exempt from taxation; that if its capital stock was taxable against complainant, it represented an investment of $27,000 in United States bonds exempt from taxation, which were taxed by assessing

the stock against the bank.

The supplemental bill then alleges that for 1889 the capital stock and surplus was likewise illegally assessed against it, and *in solido* and not against the respective owners of the shares, and refers to the assessment roll, made a part of the bill marked exhibit "C" (Record page 13, folios 24-5. Also "roll" between pages 18 and 19 of record. The returns for 1889, pages 17 and 18 of record, shows several pieces of real estate and 1750 shares of capital stock valued at $142,192.50. The tax roll shows the assessment of the stock alone—treating the real estate as being represented by the capital stock. The tax rolls of both years call the bank the owner of the stock. The bill alleges that $53,-257.81 of the proceeds of its stock were invested in United States bonds. The supplemental bill *alleges that there was no authority in law for assessing the capital stock and surplus of a National bank in solido, against the bank as its own property.*

To that portion of the supplemental bill alleging discrimination in the valuation of property, defendants answered denying the allegations. Afterwards it was stipulated that these allegations be striken out of the bill and defendant's answer be withdrawn. (Record pages 21, 22, 23 and 24 folio 48.) The case then stands upon the original and supplemental bills with all allegations of "a systematic undervaluation of property, other than complainant's property, and a systematic discrimination in the assessment and valuation of complainant's property," eliminated therefrom. This leaves the "returns, the protest for 1889, the assessment rolls, and the allegations that *the assessment of complainant's capital stock and surplus in solido, as shown by the*

assessment rolls was not authorized by the law. Also the allegations that the property upon which complainant might be lawfully assessed, cannot be seperated on the tax rolls from property, which cannot be assessed against it. In other words, its real estate is subject to taxation but on the tax rolls it is not separated from capital stock.—Complainant's capital stock is treated as representing all its property, and capital stock and surplus is alone assessed.

To the bill, *with allegations of discriminations eliminated*, defendants demurred.

The first three grounds of demurrer (Record page 19) go to allegations of discrimination in assessment alone, and it is not necessary to notice them any further.

The fourth and fifth grounds of demurrer go to the allegations of non-residence of stockholders and discrimination in favor of resident heads of families by exemption from taxation of three hundred dollars worth of property. As complainants are not now urging this ground of objection to the tax it is not necessary to notice these grounds of demurrer any further.

The sixth goes to the allegation that a large part of the capital stock of complainant is invested in United States bonds, exempt by law from taxation. If the stock was not assessed against the bank itself as owner thereof, complainants would not insist that the ground of demurrer was bad. The demurrer admits all the facts well pleaded. To assess the capital stock against the bank as the *owner* thereof and treat the stock as representing the bank's property, when a large part of the property is U. S. bonds is simply taxing the bonds.

The seventh ground of demurrer is that the allega-

tions of the bills setting forth the effects of the laws of New Mexico relating to the assessment of property for taxation, and subsequent levy and sale, will not, even if the tax is illegal, confer equitable jurisdiction. These last two grounds of demurrer will be noticed hereafter in complainant's brief.

Complainant desires to especially call attention to the fact that the main ground of attack on the assessments, is not met by the demurrer—*namely the assessment of stock and surplus in solido against the complainant, and the failure to separate property subject to taxation from that not subject to it, in making the assessment.*

The answer was withdrawn and *no issue of either fact or law* on these propositions was before the Court. under our practice demurrers must be special and the general ground does not cover it, unless on the face of the whole bill no grounds for equitable jurisdiction appears.

This brings us to the decision of the Supreme Court of New Mexico.

By reference to the opinion of the Supreme Court of the Territory, pages 33 to 36 of the Record, it will be seen that the Court practically admits that the capital stock should not be assessed *in solido* against the bank, but that the bank could not be heard to complain of it in this suit. (See folio 64 page 36 of the Record.) Why? The Court says: "The statutes of the Territory, sections 2822, 2823, 2824, and 2825, Compiled Laws, 1884, impose the duty upon the assessor to make a proper return of all taxable property in his county, and require all taxable inhabitants to furnish such assessor with a list of all their taxable

property, duly verified."

"The complainant made and delivered to the assessor such list, embracing the property referred to in the bill, including the shares of its capital stock. A certain percentage was extended on all this property at its par value for the purpose of taxation. No complaint was ever made to the assessor or to the county board of equalization that complainant did not own the property so voluntarily listed. Its sole objection was that its property had been assessed higher than similar property owned by other parties, and that such discrimination was illegal. The public officers had a right to assume that the bank had no other grievance to redress. It never hinted that it had been mistaken in listing the shares of its capital stock as its individual property instead of the property of its shareholders. In such case, when complainant had had ample opportunity to have its error corrected by the proper statutory tribunal, it would be unfair to the public interests to allow it for the first time in its supplemental bill in this suit to set up as the basis of a bill in equity to restrain the collection of a tax its own mistake, that misled the revenue officers of the Territory and its subsequent negligence in failing to ask the proper tribunal to relieve it from the consequences thereof."

An examination of the statutes referred to shows that, the assessor is required to visit each precinct in his county and "*exact*" from each person a statement in writing or list showing separately.

"1st. All property belonging to, claimed by, or in the possession, or under the control or management of such person or any firm, of which such person is a member, or any corporation of which such person is

president, secretary, cashier, or managing agent." This statement must be verified by the person making it, as follows:

"§2823. Such list must be verified by the affidavit of the person making the same, which must be substantially as follows: "I....., do solemnly swear (or affirm) that I am a resident of the county of.....; that, according to the best of my knowledge and beleif, the above list contains a full and correct statement of all property subject to taxation in the Territory, of which I, or any firm of which I am a member, or any company or corporation of which I am a president, cashier, secretary, or managing agent, own, possess or control, and which is not already assessed."

The taxpayer is not required to fix the valuation on the property. The "certain percentage extended on all this property * * for purposes of taxation" was not the work of complainant. The Court does not correctly set forth the protest filed in 1888. It is not true that complainant's sole objection was that the property was valued too high.

The proposition of the Court is that although the property was not assessable to the bank, still the vice-president having made some kind of return, it thereby became subject to taxation. The taxing officers were wholly without authority before—the law did not vest them with the power—but the act of the complainant did do so. That having attempted to tax the stock, the complainant was under the necessity thereafter of resorting to boards of equalization for relief. Complainant contends that this decision is in conflict with the opinions of this Court and will endeavor to demonstrate

it. The only authority cited by the Territorial Court is Meyer vs. Rosenblatt, 78 Mo. 495, and an examination of it shows that it is not pertinent to any matter that was before the court.

POINTS AND AUTHORITIES.

The authority to tax the shares of National Banks is conferred by the National Banking act and is by virtue of

U. S. Rev. Statutes Sec. 5216.

That section provides: "Nothing herein shall prevent all the shares in any association from being included in the valuation of personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, subject, etc.," and Section 5210 provides that "The president and cashier of every such association shall cause to be kept a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted, and such list shall be subject to the inspection of all shareholders and creditors of the association, *and the officers authorized to assess taxes under state authority* during business hours of each day, etc."

As to what the word shares as used in this statute means, see

Van Allen vs. The Assessor, 3 Wallace 583.

In this case, it is said by the Court: "It is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

The Statutes of New York assessed the "capital" of State banks—and the *shares* of National banks—

and for that reason, the Court holds the assessment under the laws of New York to have been void. It says:

"The banks of the state are taxed upon their capital, and although the Act (of New York) provides that the tax on the shares of the National banks shall not exceed the par value, yet inasmuch as the capital of the State banks may consist of the bonds of the United States, which are exempt from state taxation, it is easy to see that this tax on the capital, is not an equivalent for a tax on the shares of the stockholders."

3 Wallace 581.

Complainant calls special attention to this case—because the 6th ground of demurrer is that there is no equity in the allegation that a part of complainant's capital is invested in U. S. bonds.

The laws of New Mexico made no special provision for taxing National Banks. The *shares* in corporations are not taxed by the laws of New Mexico as the property of the *shareholder*—the property of the corporation—*their capital*—the Territorial Banks included—is taxed, and for that reason the court in this case reversed the New York Court of Appeals and held the assessment void. In New Mexico, Territorial Banks are entitled to have U. S. bonds held by them exempt from taxation. And if the *capital* of National Banks could be taxed, U. S. Bonds owned by them would likewise be exempt from taxation. The court in this very case holds that U. S. bonds held by National Banks are not exempt from taxation, because the bank and the stockholders are entirely distinct entities in law, and the bank cannot be taxed. The shares are taxed as the property of the shareholder, and the shareholder does

not own the bonds.

This and every subsequent case holds that the tax cannot be levied on the bank. "An assessment on the shares in gross against the bank is not authorized and is illegal."

1 Desty on Taxation 377 et Seq.

People vs. Com'rs 4 Wall 244.

Rosenblat vs. Johnson 104 U. S. 462.

Covington National Bank vs. City of Covington 21 Fed. Rep. 485.

National Bank vs. Commonwealth 9 Wall 353.

First National Bank of Richmond vs. City of Richmond 39 Fed. Rep. 369.

Collins vs. Chicago 4 Biss. 472.

National Commercial Bank vs. Mobile 62 Ala. 284.

19 Fed. Rep. and note, page 381.

Whitney Bank vs. Parker 41 Fed. Rep. 402.

National Bank of Va. vs. Richmond et al., 42 Id. 877.

Miller vs. First National Bank, 21 N. W. Rep. 860.

Bresler vs. Wayne co., 41 N. W. Rep. 356.

Smith vs. Webb 11 Minn. 378.

Miller vs. National Bank 10 N. E. Rep. 360.

The New Mexico statutes did not authorize the assessment to be made directly on the shares. They forbade it.

See Compiled Law of N. M. (1884) Sections 2815, 2818, 2819, 2820, 2822, 2830 and 2930.

These sections show conclusively that the *property—the capital*—of the corporation is required to be assess-

ed—if the corporation is doing business in New Mexico.

Section 2815 provides that "the property of every firm and corporation *must* be assessed in the county where the property is situated, and *and in the name of the firm and corporation. Such firm or corporation shall* pay tax, and may charge the same to its partners or stockholders according to their respective share. *The owner or holder* of stock in any firm or corporation, the entire capital or property of which is assessed *must not* be assessed individually for such stock."

Section 2816 of Compiled Laws provides that, "all taxable property shall be listed, assessed and taxed each year in the name of the owner thereof, on the first day of March."

Section 2930 provides that, "the personal property of the residents of this Territory *shall* be assessed in the county in which the owner of the same has his *residence* and not otherwise."

Section 2820 requires the agent of another "having in his possession or under his control or management any money, notes and credits or personal property belonging to such person with a view to * * in any manner using the same for pecuniary profit, to list the same at their value and such agent shall be personally liable for the tax on the same."

Section 2822—Requires the assessor to list all property belonging to *any* carporation, of which, the person of whom such list is exacted, is president, secretary, cashier or managing agent.

Section 2823 provides, "the oath to be taken by the person making the return, that the above list contains a full and correct statement of all property subject to

axation * * * of which any company or corporation of which I am president, cashier, or managing agent, own, possess or control, and which is not already assessed.

Thus it will be seen that until 1890, when the law was amended there was no provision in the law for listing shares of stock of a National Bank or any other corporation doing business in New Mexico, to the shareholders. The statute is imperative that "the property of the corporation *must* be assessed in the *name* of the corporation, and the stockholders *must not* be assessed individually for such stock.

Such an assessment cannot be in the language of the Act of Congress "including such shares in the valuation of the personal property of the owner."

The assessor was endeavoring to follow the Territorial law—if he did not do so strictly—the assessment would be void. The Territorial law requires the property—*the capital*—of the bank to be assessed against the bank and forbids the assessment of the shares. The Act of Congress does not permit the capital of the bank to be taxed. If this assessment complies with the Territorial law it is void because in conflict with the Act of Congress. If it complies with the Act of Congress it is void because in conflict with the Territorial law. If it attempted to comply with the Territorial law without strict compliance therewith, it is void.

Cooley on Taxation 259-260.

2 Desty on Taxation 642.

National Bank vs. Elmira 53 N. Y. 49.

It cannot be contended that nnder a law requiring the assessment of the capital of a corporation against

the corporation a valid assessment of the shares can be made against the shareholders, much less that a listing of so many shares of stock in the name of the corporation is "including such shares in the valuation of the personal property of the owner."

"When the state statute authorizes it, banks may be compelled by suit to pay the taxes assessed upon their shares. In the absence of such legislation such tax upon the shares is collected of the shareholders in the same manner as other taxes are collectible from individuals."

1 Desty on Taxation 389.

Sumter Co. vs. Bank 62 Ala. 464.

To hold that the assessments attempted to be sustained in this case are valid when no statute of New Mexico authorized them to be so made, is to invest the Assessor and Board of Equalization of Bernalillo County with legislative powers.

The assessments must be in conformity with the laws of New Mexico and those laws must not conflict with the statutes of the Uuited States.

But an assessment *in solido* is void because while the Act of Congress allows the assessment to be made against the owner of the shares. The taxation must not be at a greater rate than upon other moneyed capital in the hands of individual citizens of such state." If this assessment can be upheld under the laws of New Mexico, then there is a discrimination, for individuals can deduct under the New Mexico statute from any *credits* he may own any indebtedness he may owe—and if the New Mexico statute authorized such an assessment as is attempted to be upheld here both the assessment and the law would be void.

In Evansville Bank vs. Britton the Court holds that the statute of Indiana permitted the taxpayer to deduct his bona fide indebtedness from: "1st, credits or money at interest, either within or without the State, at par value. 2nd, all other demands against persons or bodies corporate, either within or without this State. "Total amount of all credits." * * But the rights, credits, demands, etc. * * all mean moneyed capital invested in that way. * * * * We are of the opinion that the taxation of bank shares by the Indiana statute, without permitting the shareholder to deduct from their assessed value the amount of his *bona fide* indebtedness, as in cases of other investments of moneyed capital, is a discrimination forbidden by the Act of Congress," and the case holds that where the law of the state either makes or permits such a discrimination, such law and all such assessments are void.

Evansville Bank vs. Britton 105 U. S. 322.
Supervisors vs. Stanley, Id. 305.
Hills vs. Exchange Bank, Id. 319.
Whitbeck vs. Mercantile Bank 127 U. S. 193.
People vs. Weaver 100 U. S. 539.

Such a mode of assessment as is here attempted to be made against the bank, even assuming that the bank can reimburse itself, prevents the stockholder from deducting his indebtedness, and in the language of the court above quoted renders both the law and assessment void. The statutes passed on in the cases above cited, assessed the shares against the individual owners, and such owner could claim his right to deduct his debts, and the court could say that as the stockholders who had no debts to deduct, the statute could be held

valid, but in the case at bar, the assessment is against the bank and no claim of the right of deduction can be made. The inevitable effect of such a system of assessment is discrimination, and complainant urges this point in answer to the contention that this assessment can be sustained, if it was authorized under the laws of New Mexico, as a compliance with the Act of Congress.

In Whitbeck vs. Mercantile Bank, it is held not necessary to make a demand for such deduction where the state law makes no provision for allowing the deduction.

Whitbeck vs. Mercantile Bank 127 U. S. 199.

Judge Hughes in the case of Richmond Bank vs. Richmond 39 Fed. Rep. 369; in passing upon a case the exact parallel of the case at bar, bases his conclusion mainly on 127 U. S. 199, and Hill vs. Bank 105 U. S. 319.

The assessment of the stock in solido against the bank, even if authorized by the New Mexico statute, would inevitably work a discrimination in violation of the Act of Congress—for the statute does not authorize the Assessor or Boards of Equilization to allow a deduction for the indebtedness of the stockholders. And it is immaterial that no demand for deduction was made, and no allegation of indebtedness made in the bill.

Hills vs. Exchange Bank 105 U. S. 321.

Id. 323.

127 U. S. 198.

100 U. S. 539

Boyer vs. Boyer 113 U. S. 690.

The assessment for 1888 included the banks surplus; this is in direct conflict with the Act of Congress as

construed by the Supreme Court of the United States. Nothing but the banks real estate can be taxed to the bank.

Rosenblat vs. Johnson 104 U. S. 462.

The only case in which an attempt to make the bank pay the tax on the *shares* of the stockholders directly, that can be cited, is the Bank vs. Commonwealth in 9 Wallace 362, and in that case the Kentucky statute imposed the tax directly on the shares of stock. This, the New Mexico statute, as already pointed out, not only does not do, but prohibits. See also

Covington Nat. Bank vs. City of Covington 21 Fed. Rep. 485.

New Orleans vs. Houston 119 U. S. 265.

And also:

Bank vs. Boston 125 U. S. 60.

The case of

First National Bank of Richmond vs. the City of Richmond 39 Fed. Rep. 309.

Miller vs. First National Bank 10 N. E. Rep. 865.

Collins vs. Chicago 4 Biss. 472, and

Bradley vs. People 4 Wall 462

are directly in point.

These assessments are both void because in conflict with the laws of New Mexico. Section 2816 of the N. M. Comp. Laws requires all taxable property to be listed, assessed and taxed each year in the name of the owner thereof. The owner of the shares under all the decisions is not the bank. It cannot be pretended that these shares are listed, assessed and taxed in the name of the owner. See especially,

Van Allen vs. Assessor 3 Wallace 584.

Smith vs. Webb 11 Minn. 478.

An assessment not in the name of the real owner is void.

Lake Co. vs. Sulphur Bank Quicksilver Min. Co. 4 Pacific Rep. (Cal.) 876.

Abbott vs. Lindenbower 42 Mo. 163.

Smith vs. Davis 30 Cal. 537.

Blatner vs. Davis 32 Cal. 328.

People vs. Whipple 47 Cal. 591.

Crawford vs. Schmidt Id. 618.

1 Desty on Taxation 554.

2 Id. 643.

San Francisco vs. Mackey 21 Fed. Rep. 539.

The assessment for 1888 also includes surplus fund and personal property and is also void for this reason.

Rosenblat vs. Johnson 104 U. S. 462.

Covington Bank vs. City of Covington 21 Fed. Rep. 485.

And in the assessment for neither year is the tax apportioned, and although the bank might have been assessed on its real estate, as the tax is not apportioned, the whole assessments are void.

2 Desty on Taxation 642 and cases cited.

Santa Clara Co. vs. S. P. R. R. Co. 118 U. S. 394.

The Pacific R. R. cases 127 U. S. 1.

No demand on the part of the stockholder or allegation of indebtness in the bill was necessary. The asssessment being made to the bank, and the statute of New Mexico requiring it to be so made, there was no provision in the law for allowing the deduction. The law in this respect and also the assessments are void.

Evansville Bank vs. Britton 105 U. S. 322

Boyer vs. Boyer 113 U. S. 689.

If, as was contended by respondent in the Courts below, this was an attempt to assess the *shares* and not the *capital* of the bank—the latter being authorized under the U. S. statute—then the assessments are void under the Territorial law, because that requires the assessments, if on the *shares*, to be in the *name of the owner thereof*, and the bank is not *the owner*. Such assessments must be authorized by state law.

Stetson vs. Bangor 56 Maine 288.

Also

Smith vs. Webb 11 Minn. 378.

Injunction is a proper remedy, and the bill states a proper case.

Hills vs. National Bank 105 U. S. 319.

Evansville Bank vs. Britton Id. 322.

Pelton vs. Bank 101 U. S. 143.

R. R. Co. vs. Ryan 113 U. S. 311.

Taylor vs. Secor 92 U. S. 575.

Boyer vs. Boyer 113 U. S. 689.

Stanley vs. Albany 121 U. S. 535.

Commis. vs. A. T. & S. F. R. R. Co. 10 Pacific Rep. 294.

2 Desty on Taxation 669 to 678 and cases cited.

The Supreme Court of the U. S. in Cummings vs. Bank, 101 U. S. 157, has expressly decided that a bank can maintain a bill for an injunction to restrain the collection of an illegal tax, on account of its fiduciary character, and to prevent a multiplicity of suits.

Cummings vs. Bank 101 U. S. 157.

Union Pacific R. R. Co. vs. Cheyenne 113 U. S. 526.

Allen vs. B. & O. R. R. Co. 114 U. S. 311.

These assessments being wholly void, it was not

necessary to make any tender of any part of the tax.

Santa Clara County vs. R. R. Co. 118 U. S. 414.

2 Desty on Taxation 657.

And because neither the Assessor, the Board of Commissioners of the County, nor the Territorial Board of Equalization had any authority to levy this tax—in other words—because they were wholly without jurisdiction to levy at all and wholly without authority to grant relief for any claim that might have been made for a deduction of indebtedness of stockholders, it was not necessary that any appeal should have been taken as a prerequisite to relief in equity, and such appeal would have been unavailing.

Whitbeck vs. Mercantile Bank 127 U. S. 199.

"To these Boards of Revision by whatever name they may be known, the citizen must apply for relief against excessive and irregular taxation where the assessing officers had jurisdiction to assess the property."

Stanley vs. Supervisors 121 U. S. 550.

Weller vs. St. Paul 5 Minn. 95.

21 Arkansas 40.

And neither board had any power to remit this assessment. Such is not their duties, and an appeal would have availed nothing. See Act of Legislature for 1887, page 232-3, Compiled Laws of New Mexico (1884), Section 2841.

But the Supreme Court of New Mexico says in effect, there was no authority in law to make the assessment until the vice-president of the bank listed the stock—he may have made a mistake. "Complainant and not the public should be made to suffer the consequences of such mistake." No authority is quoted for

this proposition. The public lost nothing by the mistake—the real estate was returned—that alone was subject to taxation, the U. S. statute compelled the bank to keep its stock books open for the inspection of the taxing officers—the vice-president of the bank, if he had intended to do so, had no authority to bind either the complainant or its stockholders by an admission that its property not subject to taxation according to law, *might* be taxed. The vice-president, is not one of the *officers* named in the New Mexico Statute as a person of whom the assessor could "*exact*" a return.

The Court then says, Complainant should have gone before the Board of Equalization and asked them to correct an assessment, void *ab initio*. This position the cases already cited show to be untenable.

Whitbeck vs. Bank, 127 U. S. 199.
Stanley vs. Supervisors, 121 U. S. 550.
Railroad Tax cases, 118 U. S. 414 and
127 U. S. 1.
2 Desty on Taxation, 642.

The Supreme Court also places its decision upon the ground that if by mistake the *vice-president* returned, the stock as taxable, the Complainant is estopped from afterwards claiming relief. The Court cites no authority for the proposition. There are authorities directly against the proposition.

See
Charleston vs. Commissioners 109.
Mass. 270.
Dunnell Mfg. Co. vs. Inhabitants of Pawtucket,
7 Gray 277.

"And when the officer assesses and values property exempt from taxation, he acts without authority, and

all of his acts in excess of his authority are void."

Republic Ins. Co. vs. Pollak et al., 75 Ill, 292.

The returning of a list by the taxpayer under the statute of New Mexico is not an assessment of the property. The assessor is not bound by the list. "It is simply a part of the means provided by law to aid the assessor in discovering and obtaining a true description of the property liable to taxation in his county."

Oregon & W. M. Sav. Bank vs. Jordan 17 Pacific. Reporter 622, (15 Oregon.)

If the assessment of property for taxation is a judicial or *quasi* judicial function, it is an elementary proposition of law that no act of the parties, not even express consent could ever confer jurisdiction over the subject matter, where the law did not confer it. It is useless to cite authorities for a proposition so universally recognized. Many of them will be found on page

301 of Vol. 12 of the Am. & Eng. Encyclopedia of Law.

Assessors act judicially,

1 Desty on Taxation page 542.

The Assessor is not bound by the list made by the taxpayer.

1 Desty on Taxation 545.

It is the duty of the Assessor to resort to the means of knowledge afforded him by the law. The law of the United States made it the duty of the bank to keep its stock books open for his inspection. The Territorial law made it his duty to visit each precinct to get returns and all other necessary information, in order to make assessments. The Assessor was just as much

affected with notice of what the law made taxable, as complainant itself. But how could complainant's rights or the rights of its stockholders be waived or affected by the act of the Vice President of the bank? He is not shown to be the managing agent, and was not one of the officers required by the New Mexcio statute to make a return. Has complainant or its stockholders done anything, by reason of the doing of which the taxing power has lost any right, has been induced to change its relations to the capital stock of the bank? Is there any case for estoppel *En Pais?* Complainant has shown that there was no law for assessing the stock of the stockholders. The law required the Assessor to assess the *property of all corporations* to the corporation. At the time these bills were filed there was still power in the collector to assess the property to the stockholders, if the assessor had the power to do so.

See Section 2847 and 2848 Compiled Laws of New Mexico (1884).

The statutes also require the real estate and the several species of property to be valued and assessed seperately.

See Id. Secs. 2815 above quoted, also Secs. 2834 and 2835 as follows:

"§2834. On or before the first Monday in March, annually, the Assessor shall make out an assessment book or roll, with appropriate headings alphabetically arranged, in which must be listed all the property in the county subject to taxation. Such book shall contain the names of the persons to whom the property is assessed, with the several species of property and the value as hereinbefore indicated, with the

columns of numbers and values as given by the person making the return, as fixed by the assessor, and as decided by the county commissioners. At the end of such book or roll, all property assed to "unknown owners" shall be entered."

"§2835. Each tract of land shall be valued and assessed separately except when one or more adjoining tracts are returned by the same person, in which case they may be valued and assessed together."

It was the Assessor's duty to assess the real estate seperately. Had he done so, complainant would have been obliged to pay or tender payment on the tax for that, before bringing suit. Is it complainant's fault that the Assessor did not do his duty? The stock he had no power to assess, the statute (Sec. 2815) required him to assess the property of the bank, not the stock of its stockholders. Was it the fault of complainant that the Legislature passed no law for assessing stock in National banks until 1891? *An estoppel never arises from conduct or expressions of opinion upon matters of law, where the facts are equally well known to both parties, and all matters of estoppel en pais must have been acted on by the party invoking it to his prejudice.*

Whitwell vs. Winslow, 134 Mass. 343.

Hammerslough vs. Kansas City B. L. & S. Ass'n.

79 Mo. 81.

7 Am. & Eng. Ency. of law pages 12 to 17.

Upon no other theory than that of estoppel can the opinion of the Supreme Court of the Territory be comprehended. It clearly appears that all sources of information and all actual knowledge were equally at

hand for the taxing officers and complainant—and also that the taxing officers did not act on the return made by the Vice President of the bank to the detriment of the public.

From a consideration of the foregoing authorities it appears that these assessments were wholly unauthorized by law, and cannot be sustained as complying with either the Territorial law, or Act of Congress, and are therefore void, that the payment of the tax would involve the complainant in a multiplicity of suits by its stockholders, or against them, that suits for the recovery of the tax after the payment would not be an adequate remedy, and that as a fidiciary agent, it is entitled to relief in equity, and that on behalf of its stockholders it is entitled to maintain such a suit.

W. B. CHILDERS,
Solicitor for Complainant.

N. B. To save any question as to whether or not a sufficient amount is involved to give jurisdiction, complainant files with this brief an affidavit showing the amount.

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IN THE SUPREME COURT

—OF—

THE UNITED STATES.

THE ALBUQUERQUE NATIONAL BANK, *Appellant,*
vs.
JOSE L. PEREA, ET AL., *Appellees.*

Record Case No. 14,573;
Term No. 1,107.
Appeal from the Supreme Court of New Mexico.

POINTS AND BRIEF OF APPELLEES.

EDWARD L. BARTLETT.
Solicitor General of New Mexico,
Solicitor for Appellees.

NEW MEXICAN PRINT, SANTA FE.

IN THE SUPREME COURT

—OF—

THE UNITED STATES.

THE ALBUQUERQUE NATIONAL BANK, *Appellant*, vs. JOSE L. PEREA, ET AL, *Appellees.*	Record Case No. 14,573; Term No. 1107. Appeal from the Supreme Court of New Mexico.

POINTS AND BRIEF OF APPELLEES.

STATEMENT OF CASE.

This case was originally brought in the Second District Court of the Territory of New Mexico by the complainant on the 3rd day of November, 1888, to restrain the collection of taxes levied upon complainant for that year, alleging as a ground for injunction inequitable, unjust and unlawful discrimination against it in valuing its property and shares at full par value, while other property was assessed at only 85 per cent. of its par value, and tendering the sum of $1,532.30, bringing the same into court as the just and full sum which it should

pay as taxes for the year 1888; that it protested against such assessment, in said protest admitting that the payment of taxes might be exacted from the bank, but claiming that it should only be taxed at 70 per cent. of its actual value.

Upon this return and protest, the Board of County Commissioners reduced the assessment on the surplus of appellant to 85 cents on the dollar, but decided that the capital stock should remain as assessed. Upon filing this bill and exhibits, the court, on the 3rd day of November, 1888, issued an order to show cause on the 12th of that month why an injunction should not issue as prayed for.

By inadvertence of the clerk, this cause was not docketed, and on the 19th of November, 1889, complainant filed its motion for leave to file a supplemental bill in this cause, which was granted. In such petition complainant sets out that a stipulation was entered into between it and respondents whereby 70 per cent. of the amount of tax due for the year 1888 should be paid by it to the collector, aud that the balance of 30 per cent. thereof should be withheld by complainant to await the result of this suit. See Transcript pages 9 and 10. And on the 29th day of November, 1889, it filed its supplemental bill, in which it sets up the matter contained in its original bill to restrain the collection of taxes for 1888, and also a large amount of new matter and allegations not contained in the original bill, and specifically denies the right of the territory to tax it at all; and seeks by it to also restrain the collection of taxes

levied upon it for the year 1889, but makes no tender of any amount to the collector for the year 1889, only stating "that it offers to pay all the taxes which can justly and lawfully be assessed against it." See Transcript pages 14 and 15.

To this supplemental bill the respondents filed their demurrer and answer, but afterwards a stipulation between the parties was filed by which the allegations of the bill to which answer was made were stricken out and the answer was withdrawn, leaving the cause to stand upon the demurrer.

The demurrer was sustained and complainant appealed to the Supreme Court of the Territory of New Mexico, where the judgment of the court below was affirmed. From which appellant brings the case here on appeal.

By agreement the case of First National Bank of Albuquerque against tha same respondents shall be considered at the same time as this, and the pleadings be considered as the same. See Transcript page 25.

POINTS AND BRIEF OF APPELLEES.

1st. In the supplemental bill, filed to cover assessments for the year 1889, there is no offer or tender to pay the amount of tax that may be due; this was done in the original bill, and the amount tendered was accepted by the collector. But this suit can not be maintained until there is a tangible offer to pay a specific amount of tax for the year 1889. The general offer "to pay what may be found to be justly and legally due" is too vague and uncertain to give equity jurisdiction.

National Bank vs. Kimball, 103 U. S., p. 732.
Pelton vs. Commissioners National Bank, 101 U. S., p. 143.
Cummings vs. Bank, 101 U. S., p. 153.
Stanley vs. Board, 121 U. S., p. 535.
Vol. 3 National Bank Cases, pp. 277-8
Williams vs. Board, 122 U. S., p. 154.
Vol. 3 National Bank Cases, pp. 281-2.
1 High on Injunction, Sec. 498.
Note to Holland vs. Mayor in 69 Am. Decisions, p. 203, and cases there cited.

2nd. Complainant, having failed to exercise his right to review the action of the taxing officer before the Board of County Commissioners and the Territorial Board of Equalization and having given in its list with values attached for purposes of taxation, is estopped from raising any question affecting the regularity of the proceedings, or the taxable value, or character of the property.

See Laws of New Mexico for 1887, p. 232.
2 Pomeroy Eq. Juris., Sec. 804.
McMahon vs. Palmer, 102 N. Y., p. 176.
Vol. 3 National Bank Cases, p. 645.
Palmer vs. McMahon, 133 U. S., p. 660.
Commissioners Silver Bow Co. vs. Davis, 6 Montana 306.
3 National Bank Cases, p. 553.
Welty on Assessment, Secs. 195-210, Sec. 4, Note.
Inhabitants of Newburyport vs. Co. Comrs., 12 Met., 213; 223-4.

1st National Bank of St. Joseph vs. Twp. of St. J., 9 N. W. Rept., 839 (Mich).

State, ex rel. Smith, vs. Cooper, 18 N. W. Rept., 438 (Wis).

Felsenthal vs. Johnson, 104 Ills., 24.

Stanley vs. Board, 121 U. S., 535.

Vol. 3 National Bank Cases, p. 276.

State vs. Kenttshnitt, 4 Nev., 209.

Buttenuth vs. St. Louis Bridge Co. (1888), 123 Ills., p. 535. In 5 Am. State Repts., p. 549. Note to Holland vs. Mayor in 69 Am. Dec., p. 204, and cases there cited.

3rd. This was substantially a tax against the shareholders of the capital stock of the bank and not against capital stock of the bank. The bank only acted as agent in paying the tax and making the list for the convenience of its shareholders and the public. See list in Transcript, page 18; and in the list the vice-president of complainant under oath puts the value at $81.31 per share, considerably less than the amount fixed by the Board of County Commissioners for the year 1888. See Transcript pages 7 and 8.

See Comp. Laws of New Mexico 1884, Secs. 2812-2815-2818.

Nat. Bank vs. Commonwealth, 9 Wall. U. S., 353, 363.

Miller vs. Banks, Ohio Sup. Ct., May, '89, in 3 Natl. Bank Cases 717.

Cummings vs. Nat. Bank, 101 U. S., p. 156-157.

Cooley on Taxation, pp. 274-395, and cases cited in note.

4th. All presumptions are in favor of the validity of a law, particularly in regard to taxation. If part of a law is valid and part not, the valid portion is to be sustained by the courts.

See note to Holland vs. Mayor, 69 Am. Dec., p. 203, and cases there cited.

The claim of exemption of $300, allowed by the statutes of New Mexico, from taxation, and of all *bona fide* debts from credits is a personal privilege to be claimed only by the person himself before the proper tax tribunals and one which the bank can not urge in its favor in an equity proceeding.

Supervisors vs. Stanley, 105 U. S., pp. 305-322.
Whitbeck vs. Nat. Bank, 127 U. S., pp. 193-199.
McAden vs. Commrs., 97 N. C., 355, in Vol. 3 Natl. Bank Cases, p. 694.
Bressler vs. Wayne Co., 25 Neb. 468.
Vol. 3 Natl. Bank Cases, p. 564.
Wassen vs. 1st Natl. Bank, 107 Ind. 206.
Vol. 3 Natl. Bank Cases, pp. 424-433.
Stanley vs. Board, 121 U. S. 535.
Vol. 3 Natl. Bank Cases, p. 268.
Williams vs. Weaver, 100 U. S. 547.
1st. Natl. Bank St. Joseph vs. Twp., 9 N. W. Rep., p. 839.
Welty on Assessments, p. 331.

The New Mexico Statutes, Section 2807 of the Compiled Laws of 1884, subdivision 4, defines credit as fol-

lows: "The term credit includes every claim or demand of money or other valuable thing, and every annuity or sum of money received at stated periods; but pensions from the United States and salaries or payments except for services to be rendered are not included in the above term. Sections 2818, 2819 of the same statutes in the Revenue Act in regard to credits are as follows:

"Section 2818. Shares of corporations or companies shall be assessed at their cash value. *Credits shall be listed at such sums as the person listing them believes will be received or can be collected thereon;* annuities at the value which the person listing them believes them to be worth in money."

"Section 2819. In making up the amount of credits which any person is required to list he will be entitled to deduct from their gross amount the amount of any *bona fide* debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no acknowledgment made for the purpose of being so deducted, shall be considered as a debt in the intent of this section."

This language is entirely different from that used in the statutes of New York and Indiana, under which the cases of *Supervisor vs. Stanley* and *Bank vs. Britton*, reported in 105 U. S. pages 305-322, were decided. And under the New Mexico statutes it is contended that the term "credit" is restricted to "claims and demands for money or other valuable thing," and can not be understood to include shares of stock, or other personal property, especially under the definition of "personal property" given in subdivision 3, Section 2807, Compiled Laws. It is as follows: "The term 'personal property'

includes everything that is subject to ownership not included within the term 'real estate.'" "Credits are *expectations* from a claim or demand from which only *bona fide* debts may be deducted and are not in any sense 'moneyed capital'" within the meaning of the National Banking Act. Personal property is everything that is subject to ownership except real estate. Surely this definition is broad enough to cover and include shares of stock in any corporation. The exemption to heads of families, which it is claimed by appellant their shareholders were entitled to the benefit of, is claimed under Section 2808 of the Compiled Laws, which is as follows:

"The following classes of property are exempted from taxation * * * * * * *

"The property of heads of families not exceeding $300 in value and any other property that may be expressly exempted by other statutes."

If the theory of the appellant is correct, and shares of stock are credits, then they are not property, and could not be exempted under this section, and the exemption by the statute of New Mexico could only apply to the heads of families residing within the territory, and would not reach non-residents in any case.

5th. National Bank shares are taxable in the territories as in states.

Commrs. Silver Bow Co. vs. Davis, 6 Mont. 306.
Reported in Vol 3 Nat. Bank Cases, p. 546.
Also decided in Idaho. See Cooley on Taxation, pp. 60-61.
Talbott vs. Silver Bow County, 139 U. S., p. 439.

6th. Under the pleadings in this case there is no inequality, lack of uniformity nor unjust discrimination against complainant charged, therefore there is no injury, nor cause of action. The law only requires that National Bank shares should not be unjustly discriminated against by the state or territory in the matter of taxation as compared with other moneyed capital in the hands of individuals.

Talbott vs. Silver Bow Co., 139 U. S., p. 447.
Adams vs. Nashville, 95 U. S. 19.
Mercantile Bank vs. N. Y., 121 U. S., p. 161-163.
Lionberger vs. Rouse, 9 Wall., p. 475.

See case cited by complainant: *Bank vs. City of Richmond, C. C. U. S. Dist. Va., 39 Fed. Reporter, p. 313;* in which the following language is used, viz.: "The court (U. S. Supreme) has decided each case upon its own special facts; the question has continually been, does the tax materially and injuriously discriminate against the shareholders of National Banks, and in every case the question has been rather one of fact than of law."

Also see case of *1st. Natl. Bank vs. Douglass County (Nebraska)*, opinion of Dillon, Circuit Judge. Reported in *1st. Cent. Law Journal, page 585*, in which he uses the following language: "It (the statute of Nebraska) does not attempt to discriminate against the National Banks, but provides one and the same mode for ascertaining the value of shares in the stock of all corporations; and more than this the legislation of congress does not require.

"The bill does not state that the valuation of the shares in the plaintiff's bank is in excess of their actual value, nor that the valuation of the shares in the State Bank of Nebraska is less than their real value, and states no fact showing that the taxation which the plaintiff seeks to avoid is in fact excessive or disproportionate. It is therefore destitute of any substantial equity. Undoubtedly the bank could be made liable to pay such taxes by suit, and no reason is seen why the collection may not be enforced by distraint in the same manner as other taxes are collected."

In view of these decisions and the revenue law of New Mexico which expressly provides, C. L. Sec. 2806, "that all property in this territory not exempt by law shall be subject to taxation." What grounds for equitable intervention does the complainant and appellant show?

If the tax levy is void, it has its remedy at law and suit in equity will not lie—the territory takes nothing by its levy, can sell nothing, can not even create a cloud upon complainant's title, and the officer attempting to distrain is a tresspasser *ab initio.* See note to *Holland vs. Mayor, 69 Am. Dec., p. 201,* andcases there cited.

If it is valid in part, the valid part must be sustained and there must be an offer to pay by complainant the specific amount which it considers due before it can maintain this action.

Section 2812 of Compiled Laws of New Mexico of

1884 in regard to listing property for taxation is as follows:

"Section 2812. Every inhabitant of this territory, of full age and sound mind, shall assist the assessor in listing all property subject to taxation in this territory of which he is the owner or has the control or management in the manner hereinafter directed: The property of a ward is to be listed by his guardian; of a minor by his father, if living, if not, by his mother, if living, and if not, by the persons having the property in charge; of a married woman, by herself or husband; of a beneficiary for whom property is held in trust, by the trustee; the personal property of a decedent by the executor or administrator; *of a body corporate, company, society or partnership*, by the principal accounting officer, agent or partner; property under mortgage or lease is to be listed by, and taxed to, the mortgagor or lessor, unless it be listed by the mortgagee or lessee."

It is not suggested that Mr. Folsom, the vice president of the complainant bank, who made and returned its list for taxation, is not of sound mind and lawful age and the presumption of law is that he enjoyed both those privileges; he not only listed the property upon which he as agent for the shareholders was willing to pay tax, but he further assisted the assessor by giving under his oath what he believed such shares to be worth, for taxable value, viz: $81.33 per share. See Transcript p. 7 and 18.

The assessor was willing to take his sworn statement as to both the amount of property and its value, and the representative of the bank accepted the assessment —made no complaint to the Board of County Commissioners, nor the Territorial Board of Equalization, both

of which bodies are special tribunals with full power to correct and remedy any errors or inequalities which may be complained of and even remit the whole amount. And yet this bank comes into a court of equity for relief, forgetting perchance that he who seeks equity must offer it.

Sections 2818 and 2819 Compiled Laws of 1884, in regard to the assessment of shares in corporations are as follows:

"Section 2818. Shares of corporations and companies shall be *assessed at their cash value.* Credits shall be listed at such sums as the person listing them believes will be received or can be collected thereon; annuities at the value which the person listing them believes them to be worth in money."

"Section 2819. In making up the amount of credits which any person is required to list, he will be entitled to deduct from their gross amount, the amount of all *bona fide* debts owing by him; but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section."

The complainant has fixed his own value on the shares to be taxed, which has been accepted by the assessor. It does not claim any exemption or offset for itself, but on behalf of its shareholders demands both. From the authorities cited above, it will be seen that it can not appear in this court as a corporation seeking privileges and exemptions as such, and simultaneously demanding the exemptions and offsets of its individual shareholders. This is a Jekyll and Hyde combination

reserved for fiction and the stage, which courts of equity do not recognize.

Section 2815 C. L. of New Mexico 1884 is as follows:

"Section 2815. The property of every firm and corporation must be assessed in the county where the property is situated, and in the name of the firm or corporation. *Such firm or corporation shall pay tax and may charge the same to its partners or stockholders according to their respective share.* The owner or holder of stock in any firm or corporation, the entire capital or property of which is assessed, must not be assessed individually for such stock."

By the form of the list returned by the complainant, it is perfectly clear that it intended and meant that the "1,750 shares representing capital stock of this bank at $81 33-100 per share" (see Transcript page 18), were to be paid upon by him as the agent of the several shareholders in their just proportion for the year 1889, as it had always done before, and as it admits in its protest attached to its return of property for the year 1888, the territory could exact from it. See Transcript page 7.

Which return and schedule for the year 1888 is totally different from the one for 1889, as will be seen by inspecting the former in Transcript pages 6 and 7, where the "capital stock" is returned at $100,000 and its surplus at $10,000. Upon which the complainant then stated in its return and protest, it was willing to pay tax at the rate of 70 per cent of its par value which it stated was its actual value. See Transcript page 7.

The original and supplemental bills in this case are incongruous and conflicting, and can not stand together.

The original bill could have been amended at any time before answer. In the original bill complainant admits that the territory has full power to tax its capital stock and allow the bank to charge the amount against the shareholders. See Transcript pages 2, 3 and 7.

In the supplemental bill it denies the right to tax either the bank or its shareholders, but takes the lofty attitude of being exempt from the ordinary burdens and duties of other citizens and corporations in the Territory of New Mexico by virtue of having been incorporated under the national banking law. That this position is not well taken see authorities cited above, and

Minn Co. vs. St. Paul Co., 6 Wall 746.

2 Bar Chan. Pr., pp. 59, 67 and 75 and notes.

The supplemental bill is to be considered as an addition to the original bill, and becomes a part of it, so that the whole bill is to be taken as one amended bill.

Gillet vs. Hall, 13 Conn., 426.

Cunningham vs. Rogers, 14 Ala., 147.

Noonan vs. Orton 21 Wis., 283.

Story's Eq. Pldg., Sec. 333.

There is a very clear and distinct difference between the taxes imposed under and by direct authority of the state or territory for general public purposes, and those assessments, or local taxes, authorized under certain conditions to be levied by municipalities and minor subdivisions of the state for purely local purposes; the former are upheld generally on grounds of public policy, while the latter are frequently avoided, and injunctions granted restraining them from enforcing their claims

on the same grounds of public policy. And from this distinction has arisen much of the apparent conflict in the decisions.

See note to Holland vs. Mayor, 69 Am. Dec., p. 198.

And it will be seen that many of the cases cited by complainant in support of its position are of the latter class, and purely local in their scope and character.

Neither in the original nor supplemental bill does the complainant set out that it brings the suit in a fiduciary capacity for its stockholders, that they are dissatisfied with its action in paying taxes heretofore or propose to sue it, nor that, if it succeeds in this action that the shareholders will receive any benefit from it, and this fiduciary suggestion "to avoid a multiplicity of suits" first appears in complainant's brief too late to avail this corporation in its efforts to avoid its just proportion of the burden of taxation which falls more lightly upon it than upon any other class. The U. S. statute requires "the president and cashier of every such association (National Bank) to cause to be kept a full and correct list of the names and residences of all the stockholders in the association, and the number of shares held by each, in the office where its business is transacted, and such list shall be subject to the inspection of all the shareholders and creditors of the association, *and the officers authorized to assess taxes under the state authority* during business hours of each day." There is no allegation in the bill that this was done. There is no territorial law requiring similar lists from banking

officers, and yet the complainant in a court of equity seeks to take advantage of its own wrong and neglect to escape one of the first and most important duties of the good citizen.

The provisions of the National Bank Act respecting the taxation of national banks does not require perfect and exact equality between national banks and other corporations, but only that the system of taxation shall not work a discrimination favorable to its own citizens and corporations, and unfavorable to holders of shares in national banks, and such discrimination must appear upon the face of the statute, or, that in the necessary, usual and probable effect of such system such discrimination will result.

Bank vs. Davenport Board of Equalization, 123 U. S., p. 83.

From all of which it is respectfully submitted that there was no error committed in the court below, and that the decision of the Supreme Court of New Mexico should be affirmed.

EDWARD L. BARTLETT,
Solicitor General of N. M.,
~~Attorney~~ Solicitor for Appellees.